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# FLAG CODE REVISION

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HEARING  
BEFORE THE  
SUBCOMMITTEE ON FEDERAL CHARTERS,  
HOLIDAYS, AND CELEBRATIONS  
OF THE  
COMMITTEE ON THE JUDICIARY  
UNITED STATES SENATE  
NINETY-THIRD CONGRESS  
SECOND SESSION  
ON  
S. 340 and S.J. Res. 91

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JUNE 7, 1974

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(II)

# CONTENTS

FRIDAY, JUNE 7, 1974

	Page
Testimony of John G. Tower, U.S. Senator from Texas, accompanied by Patricia Watkins, legislative assistant.....	8
Testimony of Edward J. Gurney, U.S. Senator from Florida, accompanied by James E. Hinrich, Jr., legislative assistant.....	11
Testimony of Allen W. Finger, executive secretary, United States Flag Foundation, New York, N.Y., and Mrs. William D. Leetch, honorary vice president, American Coalition of Patriotic Societies, Inc., Vero Beach, Fla.....	15
Testimony of Claiborne Pell, U.S. Senator from Rhode Island.....	23
Testimony of Francis W. Stover, director, National Legislative Service, Veterans of Foreign Wars of the United States, accompanied by Cooper T. Holt, executive director, Washington office, Veterans of Foreign Wars of the United States.....	27
Testimony of Daniel J. O'Connor, chairman, National Americanism Commission, The American Legion, accompanied by Charles E. Mattingly, deputy legislative director, The American Legion, and Charles E. Masters, assistant Americanism director, The American Legion.....	43
The text of S. 340, "To establish a commission to study the usage, customs, and laws relating to the flag of the United States".....	2
The text of Senate Joint Resolution 91, "To amend the joint resolution entitled 'Joint resolution to codify and emphasize existing rules and customs pertaining to the display and use of the flag of the United States of America'.".....	3
The text of Public Law 77-829, December 22, 1942, "To amend Public Law Numbered 623, approved June 22, 1942, entitled 'Joint resolution to codify and emphasize existing rules and customs pertaining to the display and use of the flag of the United States of America'.".....	5
Additional material submitted by Allen W. Finger, executive secretary, United States Flag Foundation:	
Letter, dated May 30, 1974, from Asa E. Phillips, Jr., president, American Coalition of Patriotic Societies, Inc.....	20
Partial list of officers and directors of the American Coalition of Patriotic Societies, Inc., dated June 1, 1974.....	21
List of cooperating societies with the American Coalition of Patriotic Societies, Inc., dated October 15, 1973.....	21
Additional material submitted by Francis W. Stover, director, National Legislative Service, Veterans of Foreign Wars of the United States:	
Letter, dated July 21, 1972, from Raymond B. Edwards, Veterans of Foreign Wars of the United States, to Mel Stephens, White House, with an accompanying paper on revision of the flag code.....	32
Resolution No. 110, "Respect for Our Flag," of the Veterans of Foreign Wars of the United States, dated August, 1973.....	41
Resolution No. 113, "Respect for National Anthem at Public Gatherings," of the Veterans of Foreign Wars of the United States, dated August, 1973.....	42
Resolution No. 116, "Fly the Flag of the United States Day and Night at VA Hospitals," of the Veterans of Foreign Wars of the United States, dated August, 1973.....	42
Resolution No. 87, "Revision of Public Law 829-77 (Flag Code)," dated August, 1972, submitted by Daniel J. O'Connor, chairman, National Americanism Commission, The American Legion.....	44
Opinion, Supreme Court of the United States, <i>Smith, Sheriff v. Goguen</i> , submitted by Sen. Roman L. Hruska.....	53



## FLAG CODE REVISION

FRIDAY, JUNE 7, 1974

U.S. SENATE  
SUBCOMMITTEE ON FEDERAL CHARTERS, HOLIDAYS, AND  
CELEBRATIONS, OF THE COMMITTEE ON THE JUDICIARY,  
Washington, D.C.

The subcommittee met, pursuant to call, at 10:05 a.m., in room 2228, Dirksen Senate Office Building, the Hon. Roman L. Hruska (chairman), presiding.

Present: Senator Hruska.

Also present: Thomas B. Collins, Counsel and Nancy E. Darr, Staff Assistant.

Senator HRUSKA. The subcommittee will come to order.

Today the subcommittee is meeting to hear testimony on two legislative proposals which contemplate the revision of the United States flag code. Notice of this hearing appeared in the *Congressional Record* on May 14, 1974.

S. 340 was introduced by the senior Senator from Texas, Mr. Tower, for himself and the Senator from Rhode Island, Mr. Pell. The purpose of this bill is to establish a commission to study the usage, customs, and laws relating to the flag code.

The second measure, Senate Joint Resolution 91, was introduced by the senior Senator from Florida, Mr. Gurney, and would call for a comprehensive revision and recodification of the existing flag code, which was enacted on December 22, 1942, [56 Stat. 1074]. That enactment was for the purpose of codifying the existing regulations pertaining to the use and display of the U.S. flag. Since that time, the code has served as a useful guide to civilians and civilian organizations in properly displaying and honoring our flag.

In recent years, the flag code has been subject to a multitude of differing interpretations. These various interpretations have created a good deal of confusion among our citizens with regard to the proper use of our flag. It has become apparent that some of the long-standing customs and usages are outdated and need to be revised. Other provisions of the flag code seem to need clarification and reemphasis. Many patriotic organizations and interested individuals have expressed great concern over this matter.

As we continue to move closer to the Bicentennial Celebration, it seems appropriate that Congress thoroughly and carefully review the code of conduct governing the use of our flag, the honored symbol of our proud Nation.

I am hopeful that the hearing today will produce a sound and complete hearing record upon which the entire Senate can fully consider legislation of this nature in the near future.

[S. 340, S. J. Res. 91, and Public Law 77-829 follow:]

S. 340, 83d Cong. First Sess.

A BILL To establish a commission to study the usage, customs, and laws relating to the flag of the United States

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled.* That there is hereby established a commission to be known as the United States Flag Commission (hereafter referred to as the "Commission"). The Commission shall make a complete study of the usage, customs, and laws relating to the use and display of the flag of the United States.

SEC. 2. (a) The Commission shall be composed of ten members, appointed by the President, by and with the advice and consent of the Senate, as follows:

(1) two Members of the Senate from different political parties;

(2) two Members of the House of Representatives from different political parties;

(3) one member from the Department of Defense; and

(4) five members from private life who have a special interest or knowledge of the flag of the United States.

(b) The President shall designate one of the members to serve as Chairman and one of the members to serve as Vice Chairman.

(c) Any vacancy in the Commission shall not affect its powers, and six members of the Commission shall constitute a quorum.

(d) Each member of the Commission who is appointed from private life shall receive \$125 for each day (including traveltime) during which he is engaged in the actual performance of his duties as a member of the Commission. A member of the Commission who is otherwise serving as an officer or employee of the Government shall serve without additional compensation. All members of the Commission shall be reimbursed for travel, subsistence, and other necessary expenses incurred by them in the performance of such duties.

SEC. 3. (a) The Commission is authorized to appoint and fix the compensation of such personnel as may be necessary to carry out the provisions of this Act. Such appointment shall be without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and such compensation shall be paid without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates.

(b) The Commission is authorized to obtain services of experts and consultants in accordance with the provisions of section 3109 of title 5, United States Code.

SEC. 4. (a) In carrying out the provisions of this Act, the Commission is authorized and directed to consult and cooperate with, and seek advice and assistance from, appropriate departments and agencies of the United States Government, State and local public bodies, learned societies, and historical, patriotic, civic, philanthropic, and related organizations. Such departments and agencies are authorized and requested to cooperate with the Commission in providing facilities, services, supplies, advice, and information that the Commission determines to be necessary to carry out the provisions of this Act.

(b) The Commission is authorized to accept donations of money, property, or personal services.

SEC. 5. Within one year after the date of enactment of this Act the Commission shall submit a comprehensive report of its study and activities to the President and the Congress. The report shall include specific recommendations of the Commission regarding changes in existing usage, customs, and laws relating to the flag of the United States.

SEC. 6. The Commission shall cease to exist thirty days after submission of its report.

SEC. 7. There is hereby authorized to be appropriated such funds as may be necessary to carry out the purposes of this Act.

S. J. RES. 91, 93d Cong., 1st Sess.

JOINT RESOLUTION To amend the joint resolution entitled "Joint resolution to codify and emphasize existing rules and customs pertaining to the display and use of the flag of the United States of America".

*Resolved by the Senate and House of Representatives of the United States of America in Congress assembled.* That the joint resolution entitled "Joint resolution to codify and emphasize existing rules and customs pertaining to the display and use of the flag of the United States of America," as amended (36 U.S.C. 171-178), is amended—

(1) by striking out the second sentence of section 2(a) and inserting in lieu thereof the following: "However when a patriotic effect is desired, the flag may be displayed twenty-four hours a day if properly illuminated during the hours of darkness";

(2) by inserting in section 2(c) before the period a comma and the following: "unless it is an all-weather flag";

(3) by striking out section 2(d) and inserting in lieu thereof the following:

(d) The flag should be displayed on all days, especially on New Year's Day, January 1; Inauguration Day, January 20; Lincoln's Birthday, February 12; Washington's Birthday, the third Monday in February; Easter Sunday (variable); Mother's Day, second Sunday in May; Armed Forces Day, third Saturday in May; Memorial Day (half-staff until noon), on the last Monday in May; Flag Day, June 14; Independence Day, July 4; Labor Day, first Monday in September; Citizenship Day, September 17; Columbus Day, the second Monday in October; Veterans Day, the fourth Monday in October; Thanksgiving Day, fourth Thursday in November; Christmas Day, December 25; such other days as may be proclaimed by the President of the United States; the birthdays of States (dates of admission); and on State holidays."

(4) by striking out "weather permitting," in section 2(e);

(5) by striking out "radiator cap" in section 3(b) and inserting in lieu thereof "right fender";

(6) by inserting before the period in the last sentence of section 3(f) a comma and the following: "its own right";

(7) by striking out section 3(i) and inserting in lieu thereof the following:

"(i) When displayed either horizontally or vertically against a wall, the union should be uppermost and to the flag's own right, that is, to the observer's left. When displayed in a window, the flag should be displayed in the same way, with the union or blue field to the left of the observer in the street."

(8) by striking out section 3(k) and inserting in lieu thereof the following:

"(k) When used on a speaker's platform, the flag, if displayed flat, should be displayed above and behind the speaker. When displayed from a staff in a church or public auditorium, the flag of the United States of America should hold the position of superior prominence, in advance of the audience, and in the position of honor at the clergyman's or speaker's right as he faces the audience. Any other flag so displayed should be placed on the left of the clergyman or speaker or to the right of the audience."

(9) by striking out section 3(m) and inserting in lieu thereof the following:

"(m) The flag, when flown at half-staff, should be first hoisted to the peak for an instant and then lowered to the half-staff position. The flag should be again raised to the peak before it is lowered for the day. On Memorial Day the flag should be displayed at half-staff until noon only, then raised to the top of the staff. By order of the President, the flag shall be flown at half-staff upon the death of principal figures of the United States Government and the Governor of a State, territory, or possession, as a mark of respect to their memory. In the event of the death of other officials or foreign dignitaries, the flag is to be displayed at half-staff according to Presidential instruction or orders, or in accordance with recognized customs or practices not inconsistent with law. In the event of the death of a present or former official of the government of any State, territory, or possession of the United States, the Governor of that State, territory, or possession may proclaim that the National flag

shall be flown at half-staff. The flag shall be flown at half-staff thirty days from the death of the President or a former President; ten days from the day of death of the Vice President, the Chief Justice or a retired Chief Justice of the United States, or the Speaker of the House of Representatives; from the day of death until interment of an Associate Justice of the Supreme Court, a Secretary of an executive or military department, a former Vice President, or the Governor of a State, territory, or possession; and on the day of death and the following day for a Member of Congress. As used in this subsection—

"(1) the term 'half-staff' means the position of the flag when it is one-half the distance between the top and bottom of the staff;

"(2) the term 'executive or military department' means any agency listed under sections 101 and 102 of title 5, United States Code; and

"(3) the term 'Member of Congress' means a Senator, a Representative, a Delegate, or the Resident Commissioner from Puerto Rico."

(10) by adding at the end of section 3, a new subsection as follows:

"(c) When the flag is suspended across a corridor or lobby in a building with only one main entrance, it should be suspended vertically with the union of the flag to the observer's left upon entering. If the building has more than one main entrance, the flag should be suspended vertically near the center of the corridor or lobby with the union to the North, when entrances are to the East and West or to the East when entrances are to the North and South. If there are entrances in more than two directions, the union should be to the East."

(11) by striking out section 4(a) and inserting in lieu thereof the following:

Sec. 4. (a) The flag should never be displayed with the union down, except as a signal of dire distress in instances of extreme danger to life or property."

(12) by striking out section 4(d) and inserting in lieu thereof the following:

"(d) The flag should never be used as wearing apparel, bedding, or drapery. It should never be festooned, drawn back, nor up, in folds, but always allowed to fall free. Bunting of blue, white, and red, always arranged with the blue above, the white in the middle, and the red below, should be used for covering a speaker's desk, draping the front of a platform, and for decoration in general."

(13) by striking out section 4(e) and inserting in lieu thereof the following:

"(e) The flag should never be fastened, displayed, used, or stored in such a manner as to permit it to be easily torn, soiled, or damaged in any way."

(14) by striking out section 4(i) and inserting in lieu thereof the following:

"(i) The flag should never be used for advertising purposes in any manner whatsoever. It should not be embroidered on such articles as cushions or handkerchiefs and the like, printed or otherwise impressed on paper napkins or boxes or anything that is designed for temporary use and discard. Advertising signs should not be fastened to a staff or balyard from which the flag is flown."

(15) by redesignating section 4(j) as section 4(k) and by inserting after section 4(i) a new subsection as follows:

"(j) No part of the flag should ever be used as a costume or athletic uniform. However, a flag patch may be affixed to the uniform of military personnel, firemen, policemen, and members of patriotic organizations. The flag represents a living country and is itself considered a living thing. Therefore, the lapel flag pin being a replica, should be worn on the left lapel near the heart."

(16) by striking out section 5 and inserting in lieu thereof the following:

"Sec. 5. During the ceremony of hoisting or lowering the flag or when the flag is passing in a parade or in review, all persons present except those in uniform should face the flag and stand at attention with the right hand over the heart. Those present in uniform should render the military salute. When not in uniform, men should remove their headdress with their right hand and hold it at the left shoulder, the hand being over the heart. Aliens should stand at attention. The salute to the flag in a moving column should be rendered at the moment the flag passes."

(17) by striking out section 6 and inserting in lieu thereof the following:

"Sec. 6. During rendition of the national anthem when the flag is displayed,



all present except those in uniform should stand at attention facing the flag with the right hand over the heart. When the flag is not displayed, those present should face toward the music. During rendition of the anthem, men not in uniform should remove their headdress with their right hand and hold it at the left shoulder, the hand being over the heart. Persons in uniform should render the military salute at the first note of the anthem and retain this position until the last note.";

(18) by striking out section 7 and inserting in lieu thereof the following:

"SEC. 7. The Pledge of Allegiance to the Flag, "I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one Nation under God, indivisible, with liberty and justice for all." should be rendered by standing at attention facing the flag with the right hand over the heart. When not in uniform men should remove their headdress with their right hand and hold it at the left shoulder, the hand being over the heart. Persons in uniform should remain silent, face the flag, and render the military salute."; and

(19) by striking out section 8 and inserting in lieu thereof the following:

"SEC. 8. (a) The Commander in Chief of the Armed Forces of the United States shall appoint a National Flag Commission for the purpose of necessary study and revision of this joint resolution.

"(b) Any rule or custom pertaining to the display of the flag of the United States of America, set forth herein, may be altered, modified, or repealed, or additional rules with respect thereto may be prescribed, by the Commander in Chief of the Armed Forces of the United States, whenever he deems it to be appropriate or desirable; and any such alteration or additional rule shall be set forth in a proclamation."

#### Public Law 77-829

JOINT RESOLUTION. To amend Public Law Numbered 623, approved June 22, 1942, entitled "Joint resolution to codify and emphasize existing rules and customs pertaining to the display and use of the flag of the United States of America".

*Resolved by the Senate and House of Representatives of the United States of America in Congress Assembled*, That Public Law Numbered 623, approved June 22, 1942, entitled "Joint resolution to codify and emphasize existing rules and customs pertaining to the display and use of the flag of the United States of America", be, and the same is hereby amended to read as follows:

That the following codification of existing rules and customs pertaining to the display and use of the flag of the United States of America be, and it is hereby established for the use of such civilians or civilian groups or organizations as may not be required to conform with regulations promulgated by one or more executive departments of the Government of the United States.

SEC. 2. (a) It is the universal custom to display the flag only from sunrise to sunset on buildings and on stationary flagstaffs in the open. However, the flag may be displayed at night upon special occasions when it is desired to produce a patriotic effect.

(b) The flag should be hoisted briskly and lowered ceremoniously.

(c) The flag should not be displayed on days when the weather is inclement.

(d) The flag should be displayed on all days when the weather permits, especially on New Year's Day, January 1; Inauguration Day, January 20; Lincoln's Birthday, February 12; Washington's Birthday, February 22; Army Day, April 6; Easter Sunday (variable); Mother's Day, second Sunday in May; Memorial Day (half staff until noon), May 30; Flag Day, June 14; Independence Day, July 4; Labor Day, first Monday in September; Constitution Day, September 17; Columbus Day, October 12; Navy Day, October 27; Armistice Day, November 11; Thanksgiving Day, fourth Thursday in November; Christmas Day, December 25; such other days as may be proclaimed by the President of the United States; the birthdays of States (dates of admission); and on State holidays.

(e) The flag should be displayed daily, weather permitting, on or near the main administration building of every public institution.

(f) The flag should be displayed in or near every polling place on election days.

(g) The flag should be displayed during school days in or near every school-house.

SEC. 3. That the flag, when carried in a procession with another flag or flags, should be either on the marching right; that is, the flag's own right, or, if there is a line of other flags, in front of the center of that line.

(a) The flag should not be displayed on a float in a parade except from a staff, or as provided in subsection (i).

(b) The flag should not be draped over the hood, top, sides, or back of a vehicle or of a railroad train or a boat. When the flag is displayed on a motorcar, the staff shall be fixed firmly to the chassis or clamped to the radiator cap.

(c) No other flag or pennant should be placed above or, if on the same level, to the right of the flag of the United States of America, except during church services conducted by naval chaplains at sea, when the church pennant may be flown above the flag during church service for the personnel of the Navy.

(d) The flag of the United States of America, when it is displayed with another flag against a wall from crossed staffs, should be on the right, the flag's own right, and its staff should be in front of the staff of the other flag.

(e) The flag of the United States of America should be at the center and at the highest point of the group when a number of flags of States or localities or pennants of societies are grouped and displayed from staffs.

(f) When flags of States, cities, or localities, or pennants of societies are flown on the same halyard with the flag of the United States, the latter should always be at the peak. When the flags are flown from adjacent staffs, the flag of the United States should be hoisted first and lowered last. No such flag or pennant may be placed above the flag of the United States or to the right of the flag of the United States.

(g) When flags of two or more nations are displayed, they are to be flown from separate staffs of the same height. The flags should be of approximately equal size. International usage forbids the display of the flag of one nation above that of another nation in time of peace.

(h) When the flag of the United States is displayed from a staff projecting horizontally or at an angle from the window sill, balcony, or front of a building, the union of the flag should be placed at the peak of the staff unless the flag is at half staff. When the flag is suspended over a sidewalk from a rope extending from a house to a pole at the edge of the sidewalk, the flag should be hoisted out, union first, from the building.

(i) When the flag is displayed otherwise than by being flown from a staff, it should be displayed flat, whether indoors or out, or so suspended that its folds fall as free as though the flag were staffed.

(j) When the flag is displayed over the middle of the street, it should be suspended vertically with the union to the north in an east and west street or to the east in a north and south street.

(k) When used on a speaker's platform, the flag, if displayed flat, should be displayed above and behind the speaker. When displayed from a staff in a church or public auditorium, if it is displayed in the chancel of a church, or on the speaker's platform in a public auditorium, the flag should occupy the position of honor and be placed at the clergyman's or speaker's right as he faces the congregation or audience. Any other flag so displayed in the chancel or on the platform should be placed at the clergyman's or speaker's left as he faces the congregation or audience. But when the flag is displayed from a staff in a church or public auditorium elsewhere than in the chancel or on the platform it shall be placed in the position of honor at the right of the congregation or audience as they face the chancel or platform. Any other flag so displayed should be placed on the left of the congregation or audience as they face the chancel or platform.

(l) The flag should form a distinctive feature of the ceremony of unveiling a statue or monument, but it should never be used as the covering for the statue or monument.

(m) The flag, when flown at half flag staff, should be first hoisted to the peak for an instant and then lowered to the half-staff position. The flag should be again raised to the peak before it is lowered for the day. By "half staff" is meant lowering the flag to one-half the distance between the top and bottom of the staff. Crepe streamers may be affixed to spear heads or flagstaves in a parade only by order of the President of the United States.

(n) When the flag is used to cover a casket, it should be so placed that the union is at the head and over the left shoulder. The flag should not be lowered into the grave or allowed to touch the ground.

SEC. 4. That no disrespect should be shown to the flag of the United States of America: the flag should not be dipped to any person or thing. Regimental

colors, State flags, and organization or institutional flags are to be dipped as a mark of honor.

(a) The flag should never be displayed with the union down save as a signal of dire distress.

(b) The flag should never touch anything beneath it, such as the ground, the floor, water, or merchandise.

(c) The flag should never be carried flat or horizontally, but always aloft and free.

(d) The flag should never be used as drapery of any sort whatsoever, never festooned, drawn back, or up, in folds, but always allowed to fall free. Bunting of blue, white, and red, always arranged with the blue above, the white in the middle, and the red below, should be used for covering a speaker's desk, draping the front of a platform, and for decoration in general.

(e) The flag should never be fastened, displayed, used, or stored in such a manner as will permit it to be easily torn, soiled, or damaged in any way.

(f) The flag should never be used as a covering for a ceiling.

(g) The flag should never have placed upon it, nor on any part of it, nor attached to it any mark, insignia, letter, word, figure, design, picture, or drawing of any nature.

(h) The flag should never be used as a receptacle for receiving, holding, carrying, or delivering anything.

(i) The flag should never be used for advertising purposes in any manner whatsoever. It should not be embroidered on such articles as cushions or handkerchiefs and the like, printed or otherwise impressed on paper napkins or boxes or anything that is designed for temporary use and discard; or used as any portion of a costume or athletic uniform. Advertising signs should not be fastened to a staff or halyard from which the flag is flown.

(j) The flag, when it is in such condition that it is no longer a fitting emblem for display, should be destroyed in a dignified way, preferably by burning.

SEC. 5. That during the ceremony of hoisting or lowering the flag for when the flag is passing in a parade or in a review, all persons present should face the flag, stand at attention, and salute. Those present in uniform should render the military salute. When not in uniform, men should remove the headdress with the right hand holding it at the left shoulder, the hand being over the heart. Men without hats should salute in the same manner. Aliens should stand at attention. Women should salute by placing the right hand over the heart. The salute to the flag in the moving column should be rendered at the moment the flag passes.

SEC. 6. That when the national anthem is played and the flag is not displayed, all present should stand and face toward the music. Those in uniform should salute at the first note of the anthem, retaining this position until the last note. All others should stand at attention, men removing the headdress. When the flag is displayed, all present should face the flag and salute.

SEC. 7. That the pledge of allegiance to the flag, "I pledge allegiance to the flag of the United States of America and to the Republic for which it stands, one Nation indivisible, with liberty and justice for all," be rendered by standing standing with the right hand over the heart. However, civilians will always show full respect to the flag when the pledge is given by merely standing at attention, men removing the headdress. Persons in uniform shall render the military salute.

SEC. 8. Any rule or custom pertaining to the display of the flag of the United States of America, set forth herein, may be altered, modified, or repealed, or additional rules with respect thereto may be prescribed, by the Commander in Chief of the Army and Navy of the United States, whenever he deems it to be appropriate or desirable; and any such alteration or additional rule shall be set forth in a proclamation.

Approved, December 22, 1942.

Senator HIRSKA. I am pleased to note that among the witnesses today is my distinguished colleague, the senior Senator from Texas, Mr. John G. Tower.

We call on him now for his testimony.



TESTIMONY OF THE HON. JOHN G. TOWER, U.S. SENATOR FROM  
THE STATE OF TEXAS, ACCOMPANIED BY PATRICIA WATKINS,  
LEGISLATIVE ASSISTANT

Senator Tower. Thank you very much, Mr. Chairman. I seem to be a regular performer before this committee. Accompanying me today is my legislative assistant, Miss Patricia Watkins, who has done the staff work on this bill.

Mr. Chairman, on behalf of all of us who have been working since 1965 to enact legislation providing for a revision of our national flag code, I would like to take this opportunity to thank you for providing this forum to explore a most important issue.

During the 89th Congress, the distinguished Senator from Rhode Island, Mr. Pell, and I first introduced the language of S. 340, to establish a commission to study the usage, customs, and laws relating to the flag of the United States. We have reintroduced this measure in every Congress since 1965, and I am delighted that we are finally making progress.

As you know, much confusion exists throughout the Nation in regard to the proper method for displaying the flag of the United States. This confusion exists largely as a result of the lack of a single uniform code designating proper and appropriate flag conduct. Each branch of the Armed Forces has its own code, and each differs from the others in varying degrees. Many veterans groups have flag codes of their own which combine aspects of the differing military service codes.

Public Law 77-829 established the rules for proper display of and respect for the flag by civilians, and Public Law 90-381 made the public mutilation, defacing, burning, or trampling upon the U.S. flag with the intent to cast contempt upon it a Federal offense punishable by up to \$1,000 fine and for up to 1 year imprisonment.

The court ruled in 1958, however, that the present Federal flag code does not deprive the States of the power to regulate the conduct of citizens of the State toward the United States flag when such conduct is likely to produce a breach of the peace within their borders. Consequently, each of the 50 States has enacted its own statutory provisions relating to the U.S. flag. These State codes vary considerably in defining what acts do actually constitute desecration of the flag, and the terms of imprisonment and the amount of fines imposed run a wide range.

In Texas, for example, if an individual desecrates the flag, he may be confined to the penitentiary for not less than 2 nor more than 25 years. In Utah, however, he would be punished by a fine not exceeding \$100 or by imprisonment for not more than 30 days, or both. Such variations defy reason.

To make matters worse, the Federal flag code governing civilian conduct with regard to the flag is hopelessly antiquated. That code informs us that when the flag is displayed on an automobile, it must be mounted on the radiator cap. Since external radiator caps have not been in use since the days of the "Model A", we may assume from Public Law 77-829 that flags may not be displayed on automobiles at all.

The 1942 code still informs us that the flag may not be flown in inclement weather, yet our military bases and posts do so constantly by using flags manufactured from synthetic, waterproof materials. The code informs us that it is improper to display the flag at night, and yet our flag flies freely over this very Capitol 24 hours a day. There is even confusion over the proper place of honor for the flag when displayed with the standards of the various States or of other nations. Some authorities say that it should be flown above other standards, while others say it should be placed in the center or to the right.

Mr. Chairman, such examples of the confusion which reigns with regard to proper flag conduct could be innumerable ad infinitum but I shall not labor the point. Suffice it to say that it is indeed a great tragedy that millions of Americans hesitate to display the American flag for the simple reason that they do not know how to do so properly.

In a joint proclamation of Flag Day and National Flag Week in 1971, the President stated:

Like the Declaration of Independence itself, our flag began as an audacious assertion, crying out for proof.

With the passing decades that proof has come, one freedom after another has enriched the flag's symbolism. But our vision of ideals to be realized has expanded as well, so that even now the flag speaks more of promise than of pride and looks more to tomorrow than to yesterday. And as long as America is a young nation, this is the way it must be. Each generation must do its own proving.

The American flag today means what today's Americans make it mean. We have in our power to make it abroad the banner of peace, honor, generosity—at home the ensign of liberty, justice, opportunity. In these goals all Americans can unite. To this work, each of us can dedicate himself—resolving that, on whatever else we may differ, the flag and its challenge are ours in common.

Mr. Chairman, as we approach the 197th anniversary of the adoption of the stars and stripes as the official national emblem, as well as the 200th birthday of this great Nation in 1976, let us resolve to clear away the confusion with regard to the display of the American flag. We must adopt one appropriate uniform code of flag conduct for all Americans—military and civilian—which accurately reflects the promise and purpose of this Nation and its people today.

In 1973, the American Coalition of Patriotic Societies, Inc. adopted a resolution endorsing the provisions of S. 340.

The United States Flag Foundation, the Veterans of Foreign Wars of the United States, the Honor America Day Committee, and the American Legion have also expressed their support for this measure over the years since its original sponsorship. For the information of the chairman, I have been informed by various representatives of these groups that they are prepared to launch an all-out campaign to educate the public on proper use of the flag just as soon as a uniform code has been adopted. If this is to be accomplished before our bicentennial celebration 2 years hence, we must act now.

Mr. Chairman, I strongly urge the approval of S. 340 or the proposal introduced by my good friend, the senior Senator from Florida, Mr. Gurney, S.J. Res. 91, with appropriate modifications. The specific provisions of that code concern me less than the principal issue involved here, which is to establish a uniform code for all

Americans. I know that the distinguished chairman shares my commitment in this endeavor, and again I want to thank him for providing this opportunity to explore the issue.

Thank you very much.

Senator HUTSKA. Thank you, Senator Tower.

Senator Tower, there are two approaches to these bills. One is a more deliberate procedure, to establish a commission, and thereby going to and getting a wide base of information, hopefully, to get a consensus in many of the areas where there has been not conflict but certainly differing viewpoints on different provisions regulating the code.

The second would be a bill which would actually improve specific provisions with regard to the display and use of the flag.

Now, then, we do have a 200th birthday coming up in 1976. If a commission were to be named, I am sure the members of this subcommittee and the Judiciary Committee would want to take into consideration the time element of naming a commission, constituting it, getting it under way, and getting a study completed, and that would all be very time consuming. If that time is reasonable, do you think that would have an adverse effect upon the desired objective here with the 200th birthday in mind?

Senator Tower. Well, I think that the commission idea is a good one, and I think that if early consideration were given to this legislation, the commission could act with dispatch, because much groundwork has already been done by various societies that have a particular interest in a flag code. So I am sure that the members of that commission would be sufficiently inspired by the upcoming deadline of the bicentennial that they would act with dispatch and would get a code that represents the best of all uses of the flag that are current and existant today. I prefer that approach.

However, as I said in my testimony, I am less concerned about a specific approach and have no particular pride in authorship. I would certainly be delighted to support Senator Gurney's measure should the commission idea be rejected, although I do prefer that approach.

Of course, we have been advocating this for several years. Mr. Chairman, if it could have been done back in the 89th Congress, I am sure the commission would have already done its work and we would have nothing to worry about now.

Senator HUTSKA. Not all members are as forceful and effective as the Senator from Texas.

Senator Tower. My stars, Mr. Chairman, I hope the contrary is true.

Senator HUTSKA. You referred to a number of State statutes in which there were criminal penalties. Is it your thinking that there should be a criminal penalty or sanctions for violations of any provisions of the code that would be enacted?

Senator Tower. Of course, there is already a criminal statute on the books, but as I pointed out in my testimony, it does not preempt or subordinate State law, and I think perhaps that step should be taken. In my State, it is far more hazardous to desecrate the flag than it is in Utah. In my State, you go to the penitentiary for not

less than 2 years. In Utah, it is only a misdemeanor with a fine of \$100. So I think there should be a uniform code on the matter that would preempt State law.

Senator HRUSKA. If we get into criminal statutes, then we run into a series of Supreme Court decisions on constitutionality and so on, which is not objectionable—of course, it ought to be governed by the Constitution, as the Supreme Court has ruled.

Senator TOWER. Yes.

Senator HRUSKA. That is not an obstacle at all. It is one of the things we ought to consider in reaching a decision on the bill.

Senator TOWER. Yes.

Senator HRUSKA. I have no further questions.

Does counsel have any questions?

Mr. COLLINS. I would like to ask the Senator this: Your bill calls for a commission as you have explained. If the Congress would supply this commission, do you have any idea about how much money would be necessary to carry out this idea?

Senator TOWER. I do not, and I think this is something the committee would have to consider in terms of authorizing adequate funding. I do not anticipate that it would be a terribly expensive process, however.

Mr. COLLINS. Senator Gurney's resolution calls for the creation of a commission, also. Would it be at all feasible to add to the section of Senator Gurney's resolution your commission from S. 340?

Senator TOWER. Yes, I think so. I have not analyzed Senator Gurney's bill that closely, but I am certain that perhaps the best features of both bills could be combined.

Senator HRUSKA. We thank you, Senator Tower, for your presentation and for introducing the bill.

Senator TOWER. Thank you very much.

Senator HRUSKA. Our next witness is Senator Edward J. Gurney of Florida, the senior Senator from that State.

Senator Pell has not arrived yet, has he?

Senator TOWER. I saw a member of his staff, and he said he may or may not be here.

Senator HRUSKA. I know he has a meeting of the Foreign Relations Committee.

Senator Gurney, you are recognized.

**TESTIMONY OF THE HON. EDWARD J. GURNEY, U.S. SENATOR FROM FLORIDA, ACCOMPANIED BY JAMES E. HINISH, JR., LEGISLATIVE ASSISTANT**

Senator GURNEY. Thank you, Mr. Chairman. We certainly appreciate the opportunity to appear today before members of the Subcommittee on Federal Charters, Holidays, and Celebrations to discuss briefly with you Senate Joint Resolution 91, which I introduced on April 13, 1973.

Senator HRUSKA. Will you identify your associate?

Senator GURNEY. Yes, this is Mr. James Hinish, who is my legislative counsel, who has assisted me in this matter.



I am pleased that your subcommittee should consider my resolution at this time. In just 1 week, on June 14, we shall celebrate Flag Day, and we are now on the eve of America's Bicentennial Anniversary. It is, therefore, appropriate that the Senate consider legislation which, I believe, will enhance popular respect for the American flag and its uses.

The purpose of this joint resolution is to clarify certain provisions of the existing laws regarding our patriotic customs, popularly known as the flag code.

The original flag code was contained in Public Law 623, approved by Congress on June 23, 1942. This statute was subsequently amended on December 22, 1942, by a "Joint Resolution to codify and emphasize existing rules and customs pertaining to the display and use of the flag of the United States of America." Under terms of this amendment, an official code was established for the use and guidance of civilians and civilian organizations not required to comply with regulations promulgated by the executive departments of the U.S. Government.

Over the past 30 years since that World War II resolution, the flag code has been subjected to many differing interpretations concerning the proper use and display of the Stars and Stripes. These conflicting interpretations have created a good deal of confusion in the minds of many Americans with high regard to the proper manner of displaying the flag and showing appropriate respect on ceremonial and other occasions. Some of these customs are now outdated and need to be revised. Other provisions of the flag code need clarification and reemphasis.

Special attention should be given to some of the most troublesome events which have taken place in recent years involving the use of the flag. Many persons have noted with alarm the indiscriminate and widespread use of the Stars and Stripes in advertising commercial products and in the display of the flag patches on clothing. While perhaps unintentional, allowing the flag to be used in such a manner detracts from its meaning and from the respect of the country over which it flies. Designating a national flag implies something special and that something should not be compromised for the personal or commercial benefit of an individual or individuals.

Accordingly, my resolution attempts to deal with these problems and to establish standards for displaying the flag that reflect our respect for this great Nation of ours.

Many patriotic organizations have also expressed their concern over the fact the existing code is simply confusing and sometimes outdated. The American Legion, for example, has called for legislation to restate and clarify the rules and customs relating to the use and display of our country's flag.

The concern and experience of this great organization of patriotic Americans has been invaluable in identifying the existing problems and in seeking a method of resolving those difficulties. I would like to commend them for their diligent efforts to enhance respect for the American flag, and I am extremely pleased that they are going to speak on behalf of this resolution and the bill introduced by my colleagues, Senators Tower and Pell.

Mr. Chairman, as we draw close to our national Bicentennial Celebration, it seems particularly appropriate that we redefine our flag code so that it imparts the same sense of meaning that it did to the revolutionary heroes of battles from Lexington and Concord to Yorktown.

Americans have always revered the flag. Our soldiers have carried it high. We acknowledge it every time we sing the National Anthem, and it plays an important part in practically all ceremonial occasions.

In my home State of Florida, the Pledge of Allegiance begins many of the meetings of various organizations, including civic organizations that have nothing to do with patriotic activities. But we use the Pledge of Allegiance very liberally in Florida, I am happy to say.

In these next 3 years, as cities and towns all over America get ready to celebrate the 200th anniversary of our independence, there will be more of these occasions as we rededicate ourselves to the ideals the Founding Fathers fought and died for.

More and more Americans, either as individuals or as part of a group, will want to take part in this activity—to fly the flag and show how proud they are to be Americans. And more visitors will be coming from other lands and judging us by the respect we show for our heritage.

The flag is a symbol of the unity that is America. As a people we are one, therefore, our national symbol should have about it an aura of oneness or uniformity. The flag code revision I have introduced would make that uniformity possible by setting guidelines that are easy to understand and simple to adhere to.

Nothing could add more meaning to the Bicentennial Celebration than a constant reminder that America—from the people who fly the flag to those who fight for it—is still "one Nation, indivisible, with liberty and justice for all."

Mr. Chairman, I look forward to the testimony, not only on my Senate Joint Resolution 91 and the new flag code that I have suggested, but, also, the bill that has been introduced by my colleagues Senators Pell and Tower. It is gratifying to see concern and interest in the Senate over the flag code and I feel confident that this subcommittee hearing will be most useful in helping us update and amend it. I also want to thank and advise the committee that Mr. Allen Finger of New York City, the executive secretary of the U.S. Flag Foundation, and Mrs. William D. Leetch of Vero Beach, Fla., a constituent of mine, who is the honorary vice president of the American Coalition of Patriotic Societies, are here today and will testify on behalf of the Coalition which represents over 90 patriotic groups and organizations.

I will read into the record a portion of a letter from Mr. Elliot B. Strauss, director of the Flag Foundation of America. It is dated May 30, 1974.

It is gratifying that Congress is engaged in codifying the manner in which our national flag should be displayed. Besides informing citizens as to the occasions on which the display of the flag is suitable and the rules that should be observed in the flag ceremonies, these rules should also govern action that can be taken against those who would desecrate the flag by improper display and by unauthorized changes in its design. Congressional action is particularly timely as we approach the forthcoming 200th birthday of our country.

That concludes my statement, Mr. Chairman.

Senator HRUSKA. I thank you very much.

Is it contemplated at all that your bill, in its final form, would include any criminal penalties?

Senator GURNEY. I have not included those, Mr. Chairman.

Senator HRUSKA. I know you have not in your bill. I wondered what your thoughts are on that subject.

Senator GURNEY. I really am more interested in dealing in the resolution with some of the more glaring things that need to be corrected and need to be inserted in the code. I have directed my attention more to that.

As the Senator pointed out earlier in his colloquy with Senator Tower, there is general legislation on the books that would deal with the matter, but I have not put penalties in my resolution.

Senator HRUSKA. Mr. Collins, do you have any questions?

Mr. COLLINS. I would just like to ask the Senator, section 5 of your Senate Joint Resolution 91 calls for the President to create a commission. Would that suggestion, to a large degree, follow the guidelines set out by Senator Tower in his commission bill?

Senator GURNEY. Well, it was my thought here, Mr. Counsel, that my bill would seek to put on the statute books right now some of the things that we need to treat and that have been long overdue, so we can have them enacted into law, especially with a 200th anniversary coming along. And I think there are some things that can be done right now and should be done right now.

I do think, though, that the bill of Senator Tower and Senator Pell establishing the commission has done more in dealing with a lot of the nitty-gritty and fine points. I do not think you can get everything in a resolution. I think probably you do need rules and regulations dealing with minute details, however, that can be accomplished by a commission. That was the purpose of putting section 8 in there, not to slow down or hold up any of the other provisions in the bill, but to sort of take care of the little bits and pieces which are not taken care of in the resolution. So in that respect, it would follow the commission recommended by Senators Tower and Pell.

My bill differs from theirs, though, in that I think something should be done right now.

Mr. COLLINS. Thank you very much.

Senator HRUSKA. Any further questions?

[No response.]

Senator HRUSKA. We thank you for your testimony and your interest in this subject.

You have identified and introduced Mr. Allen Finger and Mrs. William Leetch. If they are here, will they come to the witness table and be recognized.

We have a copy of your statement, Mr. Finger. We have none from Mrs. Leetch. Has she a statement?

Mr. FINGER. No.

Senator HRUSKA. You may proceed with your statement, Mr. Finger.

Mrs. Leetch, we are happy to have you here.



TESTIMONY OF ALLEN W. FINGER, EXECUTIVE SECRETARY, U.S. FLAG FOUNDATION, NEW YORK, N.Y., AND MRS. WILLIAM D. LEETCH, HONORARY VICE PRESIDENT, AMERICAN COALITION OF PATRIOTIC SOCIETIES, INC., VERO BEACH, FLA.

Mr. FINGER. Mr. Chairman, I am Allen W. Finger of 16 East 96th Street, New York City, N.Y. I am representing the American Coalition of Patriotic Societies, Inc., with headquarters at 15 East 90th Street, New York City.

With me is Mrs. William D. Leetch of 2800 Indian River Boulevard, Vero Beach, Fla., who is an honorary vice president of the Coalition.

We are today representing the American Coalition by authority of a letter of instruction from Mr. Asa E. Phillips, Jr., president of the Coalition, of 53 State Street, Boston, Mass.

The Coalition is comprised of over 90 cooperating societies and organizations representing over 1 million Americans. Among these are the Associated Farmers of California; the Daughters of the American Revolution, and the Military Order of World Wars. A partial list of cooperating societies is attached as an addendum. A complete list of the officers and directors is attached as an addendum.

We wish to thank Senator Gurney for inviting us and the committee for affording us the opportunity to make known the views of the Coalition.

The American Coalition of Patriotic Societies, Inc., was founded in 1929 to coordinate the efforts of patriotic civic and fraternal societies and individuals to promote patriotism and to encourage historical, economic, and social research into the origin and development of American institutions.

The 1974 annual meeting of the American Coalition was held on Tuesday, May 7, 1974, at the Army and Navy Club, at 17th Street, in Washington, D.C. During the business session, the delegates from the participating organizations drew up and passed a number of resolutions. Resolution number 11 entitled "The Flag of the United States" passed unanimously. The text of the resolution is as follows:

Whereas, Senate bill S. 340, introduced by Senator Tower and co-sponsored by Senator Pell on January 12, 1973, is a measure to establish a Presidential commission to study the usage, customs, and laws relating to the flag of the United States of America and to make specific recommendations in this regard; and

Whereas this commission would serve a great purpose in establishing from a national standpoint the proper method of displaying the flag and prevention of desecration of our national emblem; and

Whereas, Senate Joint Resolution 91, introduced by Senator Gurney, and House Joint Resolution 922, introduced by Congressman Biaggi, are measures to codify rules and customs for use of the flag;

*Resolved*, That the American Coalition of Patriotic Societies endorses Senate bill 340 and any legislation containing similar provisions through which respect and honor may be accorded the Nation's emblem;

*Resolved*, That the American Coalition of Patriotic Societies endorses Senate Joint Resolution 91, House Joint Resolution 922, and measures containing similar provisions.

I was asked to present the views of the Coalition on these two bills because of my background with the U.S. Flag Foundation, which I am currently serving as executive secretary.

While we recognize the value of S. 340, to establish a commission to study the usage, customs, and laws relating to the flag of the United States, and are ready to cooperate in any and every way with such a commission should it be established, we believe that there is an immediate need for an updating of the flag code as presented in Senate Joint Resolution 91, introduced by Senator Gurney.

The resolution updates the phraseology and customs of the flag code and expands the language dealing with both the correct and incorrect use of the flag itself as it was originally presented in title 36 United States Code, section 171-178.

Senator Gurney's resolution changes the language to permit officially the flying of our flag at night when properly illuminated and to fly all-weather flags in inclement weather. This has been technically possible for some time with advances in outdoor lighting and all-weather materials, but no adjustment has ever been made in the formal code. These updates are made on page 1, line 7, through page 2, line 5, of the resolution.

Page 2, lines 8-22, update our Nation's holidays reflecting the changes in date that some are celebrated from the traditional dates to those proscribed by law. It also reflects the changes in titles for the holidays, for instances September 17 is now called Citizenship Day rather than Constitution Day.

These changes are important as they bring the flag code's language into line with existing law and practice.

Whereas our religious liberty is guaranteed by our Constitution, the revised section 3(k) shown as item 8, on line 14, page 3, of the resolution takes on importance. It affirms that when both the flag of the United States of America and the flag of the church are both displayed on staffs, the flag of the United States should hold the position of prominence and the position of honor at the clergyman's right. We believe this item is of particular significance in a time when some religious leaders forget that their right to preach their religious views is guarded and protected only by the strength of Constitutional guarantee. *e*

On page 4, beginning at line 3, the specifics are given as to when the flag may be flown at half-staff as a mark of respect to the memory of the deceased. It also states specifically who may order the national flag to fly at half-staff. If this had been as fully spelled out as it is now in Mr. Gurney's resolution, certain lesser public officials would not have been able to order the flag of the United States to be flown at half-mast in sympathy with the cause of those who were killing American servicemen overseas. This resolution's wording does not extend the right to issue a public order to fly the flag at half-staff below the office of Governor.

The most important part of the resolution expands and specifies the correct and incorrect use of the flag by the general public. Certain recent court rulings have dismissed cases where the flag of the United States has been abused because the judges could find no specific mandate as to what is lawfully considered proper or improper use of the flag.

Senator Gurney's resolution, sponsored in the House of Representatives by Congressman Mario Biaggi of New York as House Joint

Resolution 922, gives specific instruction in this matter beginning on page 6 of the text, line 8, which states as follows:

(12) by striking out section 4(d) and inserting in lieu thereof the following:

(d) The flag should never be used as wearing apparel, bedding, or drapery. It should never be festooned, drawn back, nor up, in folds, but always allowed to fall free. Bunting of blue, white and red, always arranged with the blue above, the white in the middle, and the red below, should be used for covering a speaker's desk, draping the front of a platform, and for decoration in general.:

(13) by striking out section 4(e) and inserting in lieu thereof the following:

(e) The flag should never be fastened, displayed, used, or stored in such a manner as to permit it to be easily torn, soiled, or damaged in any way.:

(14) by striking out section 4(i) and inserting in lieu thereof the following:

(i) The flag should never be used for advertising purposes in any manner whatsoever. It should not be embroidered on such articles as cushions or handkerchiefs and the like, printed or otherwise impressed on paper napkins or boxes or anything that is designed for temporary use and discard. Advertising signs should not be fastened to a staff or halyard from which the flag is flown.:

(15) by redesignating section 4(j) as section 4(k) and by inserting after 4(i) a new subsection as follows:

(j) No part of the flag should ever be used as a costume or athletic uniform. However, a flag patch may be affixed to the uniform of military personnel, firemen, policemen, and members of patriotic organizations. The flag represents a living country and is itself considered a living thing. Therefore, the lapel flag pin being a replica, should be worn on the left lapel near the heart.:

The specific wording of the resolution, we believe, would allow the courts to find exact meaning for their consideration with regard to custom and practice of proper display of our Nation's flag when it comes in apparent conflict with freedom of expression.

We believe that a freedom brings with it a responsibility, while a license does not. Our freedom to express our views in public meetings, in the press, and through the media is guaranteed in our Constitutional amendments known as the "Bill of Rights." Such freedom does not extend to a license to mutilate, abuse, or show public disrespect to our Nation's flag which represents all that is positive in our country, its government, and its people.

The cooperating organizations comprising the American Coalition of Patriotic Societies, Inc., urges your favorable consideration of S.J. Res. 91 and its ultimate passage by the Senate of the United States of America.

Senator Hruska. Thank you.

Mrs. Leetch, have you anything to add to that?

Mrs. LEETCH. I have no prepared statement, Mr. Chairman. I would like to say that I have been a vice president and executive secretary of the American Coalition when it maintained an office in Washington. I have been more than an "honorary". I am imbued with the desire to do something to save what is left of our Constitutional Republic and to do what we can to clarify the flag code as a part of the effort. I believe sincerely that most of our citizens would receive happily this effort because the code is misunderstood and mis-

interpreted widely. It would be a very fine contribution to the bicentennial celebration, and I hope something along this line is done. If you will direct us, we will do anything we can to help promote response along this line. I hoped this hearing would receive some publicity today. It should.

I find that patriotism is inborn—next to love of God, man loves his country. If we strike the right chord, we will find a ready response.

Thank you, Mr. Chairman.

Senator Hruska. Mr. Finger, have you any comment to make on the final paragraph of Senator Gurney's resolution which is found on page 9? That is a reenactment of the present provision with reference to alteration, modification, review, or additional rules by the President. Have you any comment on the suitability of that or unsuitability?

Mr. Finger. Well, I think that it is suitable for very solid reasons. From day to day, occurrences do come up in which an instant decision has to be made. By granting that right to the Commander in Chief of the Armed Forces of the United States, he is then in a position to be able to make such a ruling.

Senator Hruska. How do you answer freedom of expression? You require in your code that the lapel pin or button should be worn on the left lapel. If a person should put his on the right lapel and he were criticized for it, he would say, you are trying to infringe on my right of expression.

Or if he wears a lapel pin on a necktie. Suppose he goes to a Fourth of July picnic and he sheds his coat, as many of us Americans do when it is about 95 degrees, and he puts it on his necktie? Would that be an infringement of the code? You do say, do you not, that it must be fastened on the left lapel?

Mr. Finger. The resolution states that it should be fastened to the left lapel. That is a general consensus of people, both within organizations and outside; that is where it is usually seen.

The thought of the Coalition is basically that the flag should not be used as jewelry, as a tie tack or cuff links, because this becomes demeaning to the reputation of the flag. I cannot foresee a citizen running out, getting an officer, and having that person arrested.

Senator Hruska. Well, what does that make of your resolution? It kind of deteriorates it, does it not? You say, it shall go here. Then you say, well, if he puts it someplace else, that is all right, too.

Mr. Finger. The resolution is to show what is right, what is proper.

Senator Hruska. I see. That is the approved way to do it, to show respect?

Mr. Finger. That is right.

Senator Hruska. So it is not in form of a dictate or decree?

Mr. Finger. Not as I see it here.

Senator Hruska. Well, when we attempt to put something like this in statute form, I know the motive is good and you have good faith or are sincere about it, but sometimes we get into interpretations in the application of it that are a little strained. We have patriotic programs, for example, on which people would like to put the flag. Very



often, that is done. Now, then, is a patriotic program of that kind designed for temporary use and discard? Normally, after those programs are concluded, you have a lot of the programs on the floor and so on, and yesterday's program, except for the secretary's book, is about like yesterday's newspaper. Would a printed program be something that is, in the language of your resolution, designed for temporary use and discard?

Mr. FINGER. I would not think a program would be. It usually is kept as a memento of the occasion and what occurred. At most meetings I have attended throughout my life, people either take them home or some representative of the meeting will pick up the extra programs and keep them in the file as a record of the organization holding the meeting.

Senator HUTSKA. We could go on, and we shall, and the subcommittee is grateful to you for pinpointing this, because that is what we are interested in, getting a wide variety of opinions.

Mr. Counsel, have you any questions?

Mr. COLLINS. I would like to ask Mr. Finger if, in his study over the years with the American Coalition of Patriotic Societies, he has had a compilation of occurrences that have happened in the various States in the last several years—not so much dealing with mutilation of the flag, but disrespect.

Mr. FINGER. There have been. We have a file on these things that different people send to us and different representatives. Some are being nit-picking, and some are being blatant. We do have such a background file so that if somebody says, did you hear about such and such that occurred on such and such a day in such and such a State, we usually have the ability to refer to it and we have that information available.

Mr. COLLINS. Would it be possible to provide the subcommittee with some of these instances that have occurred in the past and been brought to your attention?

Mr. FINGER. I do not have the absolute specifics with me today, sir.

Mr. COLLINS. I mean at a later date?

Mr. FINGER. Yes, we could.

I have nothing further, Mr. Chairman.

Senator HUTSKA. On page 4 of your statement, you say the "Resolution's wording"—I presume that is the resolution of Senator Gurney you are talking about:

Does not extend the right to issue a public order to fly the flag at half-staff below the office of Governor, the head of the executive branch of government.

Is he higher or lower than a Chief Justice of a State, who is head of the coequal independent branch of government, namely, the judiciary?

Mr. FINGER. Sir, I cannot answer that question in good faith. I was thinking when I made that statement of the problem we had in New York at one particular point. A mayor ordered the lowering of the National Emblem and a good many of the citizens and the city council disagreed with him. It was a public order. That was the question here.

As I read the bill, the information going down specifically does mention that the Governor has the right to do so. I do not think it prohibits anyone else from doing so, but it specifically states that the Governor may.

Senator HRUSKA. What about the mayor of a city? Would the mayor of a city have the right to declare for whom it should be held at half-mast? If the president of the city council asked or proclaimed that the flag be put at half-mast, would you object to that?

Mr. FINGER. It is not specifically set forth in the resolution. I think the problem we have here is a question of lower officials using or misusing the national flag. It is one thing to fly a State flag or a city flag at half-staff or something like that, but it is our basic belief that when we are talking about the national flag, it should be someone of a higher rank, such as the Governor or the President, or the Congress by instruction.

Senator HRUSKA. Is it not the flag of a mayor who dies? That is his flag, too.

Mr. FINGER. Yes, it is, just as it is yours or mine. But this is a matter of public proclamation.

Senator HRUSKA. Mrs. Leetch?

Mrs. LEETCH. We always thought it was reserved for an elected official. I can give a local example.

We live in a new condominium complex, and every time someone passes away there, the powers that be half-mast the national emblem. It really bothers me.

Senator HRUSKA. It would be flying at half-mast a lot of times.

Mrs. LEETCH. That is right. My personal view is that it is incongruous. The whole Nation is not in mourning for somebody up in years who passes away in Vero Beach. I would think such recognition would be for an elected official, the mayor and so on. I would not oppose the honor reserved for governors, however, and higher officials.

Senator HRUSKA. In other words, the objective is to use it suitably and respectfully, and you do not do that when you use it all the time at half-mast, or too much of the time. That is the problem, is it not?

Mr. FINGER. Yes.

Senator HRUSKA. A line of demarcation must be drawn someplace.

Mr. FINGER. Yes, sir.

Senator HRUSKA. Well, we thank you very much. If we get stuck on some special point, we are going to write to you and ask your counsel.

Mr. FINGER. Thank you, Mr. Chairman.

[The above-referred-to attachments follow:]

AMERICAN COALITION OF PATRIOTIC SOCIETIES, INC.,  
Boston, Mass., May 30, 1974.

MR. ALLEN W. FINGER  
New York, N.Y.

DEAR MR. FINGER: On behalf of The American Coalition of Patriotic Societies, Inc., and in accordance with our current Resolution No. 11, adopted at our national convention on May 7, 1974, in Washington, D.C., you are requested to make a presentation in Washington, D.C., on or about June seventh in support of the Joint Resolution introduced by Senator Gurney and Senate Bill S430, introduced by Senator Tower and co-sponsored by Senator Pell.

This is further to state that Mrs. William D. Leetch of Vero Beach, Florida, Honorary Vice President of The American Coalition of Patriotic Societies, Inc., is authorized to be associated with you in this presentation.

Respectfully yours,

ASA E. PHILLIPS, JR.

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 Women of the Legion of Valor of the U.S.A., Inc.

Senator HRUSKA, Senator Pell, we waited for you for a little while and then we proceeded with these witnesses, I hope you will forgive us.

Senator PELL, I ask you to excuse me, I was in another Senate hearing in the same position, and I ask your forgiveness.

Senator HRUSKA, We know a great deal depends upon a Senator's time schedule.

You may proceed with your testimony, Senator Pell. Senator Tower and Senator Gurney have already given their testimony.

TESTIMONY OF THE HON. CLAIBORNE PELL, U.S. SENATOR FROM  
RHODE ISLAND

Senator PELL. Thank you very much, Mr. Chairman.

At the outset, I would like to give the fullest recognition to the leadership of the senior Senator from Texas, Senator Tower, on behalf of this legislation. Senator Tower and I have teamed together on this and similar flag code legislation going back to 1969. Because I have been a sponsor and cosponsor of this legislation for several Congresses now, I particularly appreciate the fact that this subcommittee is providing an opportunity for expression of views on it.

The legislation itself is straightforward and not complex. The bill would establish a 10-member Presidential commission, appointed by the President and subject to confirmation by the Senate, to conduct a thorough 1-year study of the usage, customs, and laws relating to the use and display of the flag of the United States.

The commission would submit a report of its study to the President and to the Congress, and the report would include specific recommendations for changes in existing usages, customs, and laws relating to the flag.

It has been 32 years since the Congress enacted the first code on usage and display of our national emblem, in June of 1942. And the code adopted at that time actually was first drafted and adopted by a National Flag Conference held in Washington in 1923. So we are talking essentially about a flag code that had its origins 51 years ago.

Inevitably, certain provisions of that code now appear somewhat outdated: the provision, for example, that "When the flag is displayed on a motorcar, the staff should be firmly fixed to the chassis or clamped to the radiator cap." (36 USC 175(b)). Radiator caps, of course, have long since disappeared under the hoods of automobiles.

That is only one example of how the immense changes in our society during the past 50 years have raised questions about the proper display and usage of our national flag.

For example, in recent years there have been many instances in which organizations, including policemen, firemen, postal workers, and others have expressed a desire to wear flag emblems as part of their uniforms. The flag code is silent on whether this is appropriate, and, there is no authoritative answer to the question of how such an emblem should be worn.

There are, in fact, widely differing opinions. In the case of flag shoulder patches on the uniforms of policemen, for example, the President through a White House spokesman, approved of the idea, while the U.S. Army Institute of Heraldry advised postal workers that under the traditions of our Government, the American flag should not be used on any uniform except for emergency identification.

On the other hand, the Congress in 1970 adopted an amendment on the District of Columbia Police and Fireman's Salary Act which

requires that the uniforms of our Capitol police and certain other Federal police forces shall bear, "a distinctive patch, pin, or other emblem depicting the flag of the United States or the colors thereof."

As you can see, agreement is lacking even within the Federal Government on proper uses and display of the flag.

There are countless other questions that have arisen for which our flag code provides no clear answer:

Is it proper to have a fringe on a flag, and, if so, is it only proper to display such a flag indoors, as some contend, or can a flag with a fringe be displayed out of doors?

And what of ornaments, such as eagles and globes, on flagstaves? What ornaments are considered proper and in what circumstances?

And is it proper, with the development of new water-resistant fibers and materials, to display the flag in inclement weather, assuming that the original intent of the existing code was to prevent damage to the flag?

Many of these questions may seem insignificant or petty, but they are in fact important. The overwhelming majority of Americans have a deep respect and, indeed, a reverence for our national flag, as a symbol of human values and governmental concepts they treasure.

To Americans who are proud of our flag, frequent, proper, and respectful display of the flag is important. And it is troubling to patriotic organizations and to the average citizen when they cannot find an authoritative answer or even a consensus on the proper use and display of the flag or flag emblems.

The flag commission proposed by this legislation could update our flag code and recommend a uniform procedure for the display and use of the flag in all circumstances. In doing so, it would draw upon the knowledge, advice, and guidance of patriotic organizations and individuals who have special interest in the flag and special knowledge of flag practices.

Mr. Chairman, I have the honor of serving as an honorary co-chairman of the U.S. Flag Foundation, an organization incorporated in 1942 to carry on the work of its predecessor, the American Flag Association, in fostering public sentiment in favor of honoring the flag of our Nation. One of the principal goals of the Foundation for several years has been a thorough review and updating of our flag code.

My long-time friend, the late Lawrence Phelps Tower, as president of the Foundation, spent many years of his life in research on our flag and became, in fact, one of our Nation's leading authorities on the origins and history of the flag. I regret that he cannot be with us today to share his incomparable knowledge with us. I know this hearing would have been a memorable occasion for him.

Before I conclude, Mr. Chairman, I would note that as we approach our bicentennial year in 1976, it would seem particularly appropriate and necessary that we have a well-recognized procedure for display of our flag in all its uses—from the large ceremonial function, to the honor and respect we give it in our individual homes. For instance, I often hang the American flag from our own house

and sometimes until 1:30 in the early morning, with lights shining on it. I do not know if it is correct to have it there at that time or not correct. This is the kind of situation that could be resolved by the workings of a flag commission.

I believe that the work of this commission would give dignity and historic relevance to our flag as we observe our bicentennial. I believe the legislation would enhance respect for the flag, and I strongly urge favorable consideration of the bill.

What the legislation seeks is no more than a common guide that all patriotic citizens may look to in displaying the flag of our country, with the knowledge that the flag is far more than a design or a colorful piece of material.

As President Woodrow Wilson said in his flag day address in 1915:

The things that the flag stands for were created by the experiences of a great people. Everything that it stands for was written by their lives. The flag is the embodiment, not of a sentiment, but of a history. It represents the experiences made by men and women, the experiences of those who live under that flag.

I thank you.

Senator Hruska. I have asked the other Senators, and I ask you: What about the inclusion of a criminal sanction or penalty in the flag code at this time? Do you think it is desirable or not desirable, because we do get into other considerations, as you know, on account of the Supreme Court decisions.

Senator PELL. I realize that. I realize the Supreme Court has ruled to the contrary. My own view that there should be some penalty, perhaps a misdemeanor, but some minimal penalty attached, yes.

Senator Hruska. You think there should be?

Senator PELL. Yes.

Senator Hruska. Some of the Supreme Court decisions were made on the basis of saying that the language of the statute is too constitutionally vague. Now, I think that when applied to this kind of case where, on the third or fourth page of your statement, you say, "the overwhelming majority of Americans have a deep respect, indeed, a reverence, for our national flag," if we put into the law that anything that is contrary to showing of deep respect and reverence for our national flag is illegal and punishable by \$5, or \$25, or \$100, it is safe to say that the Supreme Court will say, that is constitutionally vague, and I think with some justification.

Senator PELL. Yes. I think the Supreme Court would be correct in that case. What I am talking about is when the flag is used as an article of clothing on the seat of the trousers, blue jeans, and things of that sort. I am not talking about—

Senator Hruska. Well, flagrant cases are easy to take care of. It is the borderline cases that give us trouble.

Senator PELL. I can remember when I was a young man in Spain, I declined to hold my hand up in a flag salute as their flag went by, and I was arrested for doing that. I do not think that was correct. That kind of procedure should not be punished, no, it is the use of the flag in an irreverent way itself.

Senator Hruska. For example, you say, what about ornaments such as the eagle or globe. I can imagine some patriotic citizens say-



ing, if I cannot have an eagle up there, you are interfering with my freedom under the law.

Senator PELL. I can see that, and I can see some equally patriotic society saying, I want the dove of peace being displayed up there, and they would be right, too.

That is not what I am talking about. Those are guidelines. I am talking about actual abuse of the flag, which always bothers me when I see people wearing it on their clothes. I even wonder sometimes when I see these lapel pins with the American flag on it, because I think you do not have to wear your flag on your heart, or sleeve, or your lapel to prove you are a good American. I think the flag should be used as a device to fly in the breeze the way it was intended.

Senator HRUSKA. I think the example you gave us about the District of Columbia code requiring that certain officers of the District must have some flag or colors of the flag on, and other organizations saying that is improper is an illustration of the confusion and the inconsistency we have with regard to this.

Senator PELL. Exactly.

Senator HRUSKA. One other question arose in the testimony this morning. That is the possibility that the nature of commissions being what it is and the tradition and functioning of a commission being a deliberate thing which is time consuming, we might lose too much time to proceed in that fashion in order to get something definite by 1976. In fact, we are in the Centennial years now. We would like to get something. What comment would you have on that?

Senator PELL. I believe we should do the best we can. If we cannot do it, we cannot do it. But we should move ahead and if there are some controversial portions of Senator Tower's and my bill, knock those out, but let us get something on the road and into being before 1976.

Senator HRUSKA. Could we, as Senator Gurney seems to want to do, revise within the framework of the present code some of those provisions, update them, and then provide also for the creation of a commission that would undertake to do further study on a longer range basis, and give its recommendation? Do you think that would have any practical value? In the meantime, we would have the benefit of this updating.

Senator PELL. I would prefer to see the concept kept in a single package, simply because once the updating has been done, it could remove pressure to move ahead with a commission, and we could wait until our tricentennial before we have our commission established.

Senator HRUSKA. Finally, there is present in the law the provision that is found on page 9 of Senator Gurney's bill, that, "any rule or custom pertaining to the display of the flag of the United States of America, set forth herein, may be altered, modified, or repealed, or additional rules with respect thereto may be prescribed, by the Commander in Chief of the armed services of the United States, whenever he deems it to be appropriate or desirable; and any such alternation or additional rule shall be set forth in a proclamation."

Now, that has been on the book for a good many years. It was in the 1942 act. Do you see any objection to that provision?

Senator PELL. Personally, though I never thought about it in depth, I do not. I think the actual rules and regulations should be left up to the executive branch as long as they are within the framework of what the board of directors, the Congress of the United States, sets forth in a flag code based on the commission's recommendations.

Senator HRTSKA. As you know, that has been used sparingly over the last 30 years by all of the Presidents. They have not used it indiscriminately or unwisely in any instances that I know of.

Senator PELL. Yes, that would be my view.

Senator HRTSKA. Senator, thank you very much for appearing here.

Senator PELL. Thank you, sir.

Senator HRTSKA. Our next witness is Francis W. Stover, director of the National Legislative Service of the Veterans of Foreign Wars of the United States.

**TESTIMONY OF FRANCIS W. STOVER, DIRECTOR, NATIONAL LEGISLATIVE SERVICE, VETERANS OF FOREIGN WARS OF THE UNITED STATES, ACCOMPANIED BY COOPER T. HOLT, EXECUTIVE DIRECTOR, WASHINGTON OFFICE**

Mr. STOVER. Mr. Chairman, on my left is Mr. Cooper T. Holt, executive director of the Washington Office of the Veterans of Foreign Wars of the United States.

Senator HRTSKA. We are happy to have you here with us, Mr. Holt.

Mr. HOLT. Thank you, Senator.

Mr. STOVER. We thank you for the invitation to appear before this distinguished subcommittee to present the views of the Veterans of Foreign Wars respecting proposals to study and codify the laws regarding the U.S. flag.

The membership of the Veterans of Foreign Wars is presently more than 1.8 million. VFW members meet at least once a month in more than 10,000 posts throughout the Nation and some in foreign countries. At each VFW meeting—national, State, district, county council, or conference—a flag of the United States is displayed, with part of the opening ceremony being a recitation of the Pledge of Allegiance.

This is just one example of why the membership of the Veterans of Foreign Wars is intimately concerned with any and all proposals relating to our national flag.

Perhaps the words by President Woodrow Wilson on a Flag Day long ago best capture the meaning of the American flag:

I know of nothing more difficult than to render an adequate tribute to the emblem of our Nation. For those of us who have shared that Nation's life and felt the beat of its pulse, it must be considered a matter of impossibility to express the great things which that emblem embodies.

The flag of the United States has not been created by rhetorical sentences in declarations of independence and in bills of rights. It has been created by the experience of a great people, and nothing is written upon it that has not been written by their life. It is the embodiment, not of a sentiment, but of a history, and no man can rightly serve under that flag who has not caught some of the meaning of that history.

The position of the Veterans of Foreign Wars on this legislation is contained in a VFW national resolution, identified as No. 106, entitled, "Flag Law and Customs," which was unanimously adopted by the delegates to our most recent national convention, which was held in New Orleans, La., August 17-24, 1973. VFW Resolution No. 106 reads as follows:

Whereas, no major revision of the flag laws or customs has been made since 1942; and

Whereas, much disrespect and scorn has been directed toward the flag of the United States; and

Whereas, U.S. Senate bill 340 would create a Federal commission to study usage, laws, and customs concerning the use and display of the flag; now, therefore

Be it resolved, by the 74th National Convention of the Veterans of Foreign Wars of the United States, that we support Senate bill 340 and urge Congress to adopt such legislation and further urge the President of the United States to sign such legislation when it arrives on his desk.

The VFW, therefore, pursuant to this resolution, highly commends Senator Tower of Texas for sponsoring and Senator Pell of Rhode Island for cosponsoring S. 340, which will establish a commission to study the usage, customs, and laws relating to our flag.

There is considerable bewilderment and confusion with respect to the display of our flag. There are different codes for displaying the flag, with differences even in the flag codes of the branches of the armed services.

It is noted that the commission contemplated in S. 340 will be composed of 10 members, 5 of whom will be appointed by the President from private life, who have a special interest in or knowledge of the flag of the United States. It is suggested that a representative of the Veterans of Foreign Wars would meet this requirement. It is hoped that in recommending S. 340 to your full committee, it may be a part of the legislative intent that qualified representatives of major national veterans organizations be considered for the five members of the commission to be appointed from private life.

As indicated, the VFW is extremely interested in the Federal flag code. Our organization has spent considerable time and study with the objective of rewriting and bringing the flag code up to date. Recently, the VFW, pursuant to a request from the executive branch, prepared a suggested revision of the flag code. As far as can be ascertained, no follow-up action was ever taken by the White House concerning a recommended revision of the flag code to the Congress. However, a copy of the proposed flag code revision, as prepared by the VFW, which is attached to this statement, is hereby submitted to this subcommittee for your appropriate consideration and action, as you consider this legislation.

The provisions of Senate Joint Resolution 91 by Senator Gurney of Florida will codify and bring up to date the many existing rules



and customs pertaining to the display and use of the flag of the United States. The provisions contain many of the suggestions made by the VFW revision and study. It is further noted that Senate Joint Resolution 91 calls for the President to appoint a national flag commission similar to the commission envisioned by S. 349.

There were adopted at our 74th National Convention in New Orleans last August a number of resolutions which bear directly on some of the provisions of Senate Joint Resolution 91. For example, one VFW resolution, identified as No. 119, entitled "Respect For Our Flag," calls upon all citizens to render proper respect for our flag.

Another resolution, unanimously adopted by the delegates to our New Orleans National Convention, is identified as No. 113, entitled "Respect For National Anthem at Public Gatherings."

A third resolution, identified as No. 116, is entitled "Fly the Flag of the United States Day and Night at VA Hospitals." It will be deeply appreciated, Mr. Chairman, if the full text of VFW resolutions Nos. 110, 113, and 116 be made a part of my remarks at this point.

It is noted that there are three major provisions of Senate Joint Resolution 91 to update and make uniform the present customs regarding the conduct of citizens: (1) when the flag is passing in parade or review; (2) during the recitation of the Pledge of Allegiance to the flag; and (3) during the rendition of the National Anthem. In each instance, men not in uniform would remove their headress with their right hand and hold it over the left shoulder, the hand being over the heart, and all present during these ceremonies, except those in uniform, would stand at attention facing the flag with the right hand over the heart.

Further, it is noted that another provision of Senate Joint Resolution 91 prohibits the use of the flag as wearing apparel, or as a costume, or athletic uniform. However, a flag patch may be affixed to uniforms of military personnel, firemen, policemen, and members of patriotic organizations, such as the Veterans of Foreign Wars.

Other provisions of the bill propose to bring the flag code of 1942 up to date regarding changes in dates which have occurred since that time, as well as calling for the flag to be affixed to the right fender rather than the radiator cap, which is now under the hood of most automobiles, when displayed on motor vehicles in a parade or review.

Mr. Chairman, these proposals before this subcommittee are much needed in the direction of clarifying the different interpretations of the flag code of 1942, as amended. It is realized that the flag code is a civil code and that there are no sanctions or penalties attached. The flag code is not punitive.

It is, of course, a punishable crime under title 18, United States Code, to publicly defile, mutilate, or desecrate the flag, a law which was passed by the Congress a number of years ago. This law carried out a long-held position of the VFW.

Mr. Chairman, throughout our history as a Nation, the flag has been the symbol of our wars. It has proudly led our troops in battle, and it reverently drapes the caskets of those who have fallen and

veterans who have made the extra sacrifice in the national interest by their service in the Armed Forces during wartime. Today, our flag signifies our national presence on battleships, airplanes, and naval vessels, including submarines, all over the world. It was placed on the moon by the astronauts. One of them, Col. James B. Irwin, in his historic speech to a joint session of Congress on September 9, 1971, said:

The proudest moment of my life was when I saluted our American flag that we had planted on the plain at Hadley-Apennine (on the moon).

Our national flag flies over our Nation's Capitol and national cemeteries throughout the world. All Americans not only have great respect for our flag but a deep affection for which it stands. The legislation before this subcommittee will make the flag code sufficiently certain and definite and inform all Americans of how to display their respect and affection for our flag at public gatherings and ceremonies wherever our flag is displayed. It should end the confusion concerning the display and respect of Americans regarding our national flag. It is, therefore, strongly recommended that a commission be established, as proposed in these bills, and that the flag code be brought up to date as called for in the attached VFW resolutions which carry out the desires and concerns of the membership of the VFW.

I thank you very much, Mr. Chairman.

Senator HIRSKA. Mr. Stover, we thank you. That is a splendid statement. Furnish the copies of the resolutions to which you have referred and they will be incorporated in the record at the conclusion of your remarks.

Mr. STOVER. Thank you, Mr. Chairman.

Senator HIRSKA. Mr. Stover, you testified it is a punishable crime under title 18 of the United States Code to publicly mutilate or desecrate the flag. A criminal statute is one thing; a code is another, is it not?

Mr. STOVER. Yes, sir.

Senator HIRSKA. I wonder as to whether you had in mind to include in the code itself something like what Senator Gurney has in his resolution, where if that were adopted, it would be a revision of the present code that is in chapter 806. Would you have in mind that there should be a criminal penalty also in violation of the code?

Mr. STOVER. Our resolutions under study, which implement our VFW national mandate, do not contemplate changing the Federal code into a criminal code. As I understand it, when sanctions are tied to a particular provision of a code or actions become punishable by sanctions, then that becomes translated into a criminal code. Now, the criminal code, as you know, is presently in title 18, United States Code, and it is a crime to publicly mutilate, desecrate, or defile the U.S. flag. As I understand this flag code of 1942, it is not a criminal code.

Senator HIRSKA. It has no criminal sanction?

Mr. STOVER. It has no criminal sanction of any kind. Whether it should be elevated or converted to a criminal code in that sense and would have some punishment attached to it—

Senator HRTSKA. There are some who believe it would be difficult to do that because of other provisions of the Constitution. You were in the room, I believe, when I used some of the examples where the code said you should wear the flag pin on your left lapel and you could not put an eagle above the flag, and that is not either defiling, mutilating, or desecrating the flag. It would be most difficult to say that if it is on the tie, it is all right, and if it is on a shirt pocket, it is not all right, but on a coat lapel, it is all right. Now, I would think that you could not point to any proof that to put the flag pin on a tie would defile, mutilate, or desecrate it, and you get into the business of freedom of expression, and so on. Those are some of the considerations that we get into when people say, well, let us enforce the code. It is most difficult. It is another thing when we get into section 700 of title 18 of the United States Code that says—the text of which will appear in the record—"Desecration of the Flag of the United States and Penalties." There are many, many cases under that. The first paragraph, for instance, (A) says whoever knowingly casts contempt upon the flag of the United States by publicly mutilating, defacing, defiling, burning, or trampling upon it shall be fined not more than \$1,000 or imprisoned for not more than 1 year or both.

Then there is a host of notes, three printed pages of very fine print, that contain the summaries of some of the cases decided under that title. Those are some of the things that this subcommittee and the judiciary committee will have to get into in drawing any bill or any code that would get into that field.

Mr. STOVER. I believe that the VFW would support putting teeth in the flag code if it is possible. We certainly prefer some sanctions in the code if it can be done within the framework of our Constitution and the experience that we have developed.

Senator HRTSKA. At the same time, the code serves a purpose, does it not? It takes out the confusion, misunderstanding, and indefiniteness. People are looking for information. They are not looking for commands, they are not looking for orders or decrees. They want information on what is respect or what is the proper way to act.

Mr. STOVER. I think this ought to be done by our 200th anniversary, as indicated by our previous witnesses. If you can do it, the code certainly should be updated, if possible, in time for the Bicentennial.

Senator HRTSKA. Thank you.

Do you have anything to add to that?

Mr. HOLT. As said by Mr. Stover earlier, I think the American people are really crying out loud for some guidance as to the proper manner, when and how to display our flag. All of us remember Mayor Lindsay issuing an order to fly the flag at half-staff for a citizen of New York. We think that is going a little too hard.

As the lady said about the condominium owners, I know of two posts in the VFW, for instance, large posts, over 2,000 members each, when one of their members dies, they fly their flag at half-staff. Their flag is at half-staff almost all the time.

These things should not be permitted, I believe. I believe the majority of the VFW would like a commission to get into the proposition of who really would decide when a flag should be flown at half-staff. I have a feeling it should be left to the Commander in Chief of our Armed Services. I believe the great majority of the people would abide by a commission recommendation here, and I hope they do look into it.

Senator Hruska. Thank you both very much for appearing.

[The above-referred-to documents follow:]

VETERANS OF FOREIGN WARS OF THE UNITED STATES.

Kansas City, Mo., July 21, 1972.

Mr. MEL STEPHENS  
The White House,  
Washington, D.C.

DEAR MEL: The object of rewriting the Federal Flag Code was to up-date it; to line up the provisions of the Code in a more readable, better flowing sequence; to use layman's language and to make full mention of the Presidential Proclamations and Public Laws which the Federal Flag Code has heretofore failed to bring fully to the attention of the Public.

This, I trust, has been done in the attached re-write.

The portions of the present Federal Flag Code which I did not change will be in black print.

Every word, sentence, paragraph or section that I changed will be in red print.

As the re-write considerably enlarged the Code, I had to change the numerical and alphabetical sequences used in the present Federal Flag Code.

As the present Code stands, you will note (from the attached copy) that the Sections are numerical while the Subsections are alphabetical.

I've revised that procedure because there are only 26 letters in the alphabet and I had to list over 26 Subsections, therefore my Sections are alphabetical and my Subsections are numerical—which, quite frankly is even clearer, I believe. Also, more Subsections can be added anytime with numerical designations, whereas that old limit of 26 alphabetical characters would always be a block.

On the first page of the re-write, note that I have inserted some new data concerning the state flag codes.

I have also inserted the text of Public Law 90-381 so the public will, for once, be aware of its existence and of its stringent provisions against misuse of the flag.

I am also extremely interested in bringing to their attention the definition of the word "flag."

Note also, that I have inserted clarifying data directly after Public Law 90-381 which serves to explain National Ensign, National Color and National Standard, which is something that neither Public Law 90-381 nor the Flag Code does. Because of this oversight many people are presently confused about such terms.

I am going down the list now and cover all changes I have made by section and subsection:

SECTION A (2)

Many of the dates in this section should have been changed years ago. The advent of the new, so-called "Monday Holiday Bill" outdated the section, but even prior to that new piece of legislation there were faults. You will note that in the present Federal Flag Code this section lists both Army Day and Navy Day as special occasions upon which we should fly the flag.

There are no such days and haven't been since Armed Forces Day was initiated many years ago. So you can readily see that even now this present Code is still encouraging millions of people to display the flag on all the wrong dates.

SECTION A (6)

This change is in full accordance with the Library of Congress Legislative Reference Service pamphlet "The Federal Flag Code Including Selected Questions and Answers" (see page 9 of the pamphlet.)



## SECTION A (7)

Same source as above. (see page 10).

## SECTION A (8)

Same source as above. (see page 12.)

## SECTION A (9)

This is one provision which I am seeking to have incorporated into the new Federal Flag Code.

My understanding is that such a rule does apply to our neighboring country, Canada, and I certainly believe it is fully logical that it should apply in our country.

## SECTION A (10)

The United States Flag should occupy the *place of honor* in this country and that is to the *right* of other flags (see page 17 of the Library of Congress pamphlet).

## SECTION A (22)

Too many persons are placing peace symbols, doves, ecological data, political slogans, etc., in the place of the stars in the blue field of our flag. There is an approved design of 50 stars for that blue field and no other items should appear there. The Federal Flag Code *must* make this *extra clear* if desecration of our flag is to be discouraged.

When our forefathers designed our flag they provided for a field of blue containing stars and nothing else. Let's *stick* to their plan.

## SECTION A (24)

I have added one sentence to this provision (which is already part of the present Code).

People are not supposed to carry the flag in a horizontal position and should never toss coins or anything else on it. Far too many parades still use the flag as a receptacle for gathering funds. This practice should cease.

Flag authorities have frowned on this sad practice for years.

## SECTION A (27)

Far-out individuals or groups constantly show their hostility by turning our flag upside down to show how *perturbed* they are.

This type of reaction has nothing in common with the original intent of this provision of the Flag Code which envisioned the upside down flag as an actual case of dire emergency.

Let's close this obvious loophole to demonstrators and make the Flag Code worthwhile.

## SECTION A (29)

This provision is *not* part of our present Flag Code, but it should be. It would certainly prohibit the carrying of Viet Cong flags in parades in this nation. Such flags are an insult to the parents and relatives of men who have served heroically in Viet Nam or who have given up their lives in the name of patriotism.

We are all well aware that no one would have carried a Japanese or German flag in any parade in this country during World War II.

I think that was a much healthier attitude than that which now prevails and allows such flagrant anti-American displays.

## SECTION A (40)

Flag authorities have long stated that it is all right to fly an outdated United States flag, provided it is in good condition.

Therefore, it is about time that we did incorporate this fact in the new Federal Flag Code, so people will stop destroying perfectly good flags and use them until they become unfit to display.



## SECTION A (41)

Antenna flags are obviously with us to stay. Therefore we need to cover their use in the Flag Code. The present one doesn't even acknowledge their existence. Thus, the average citizen doesn't know what to do concerning their use.

## SECTION A (42)

Flag patches have never been covered by the Flag Code either. So let's do so in the new Flag Code.

## SECTION A (43)

The same type of thinking applies to flag pins and buttons. Let's cover their usage in the Flag Code and eliminate guessing games.

## SECTION A (44)

No mention of flag-staff ornaments has been included in the Code before. It's time we enlightened the people, so they can do what is right.

## SECTION A (45)

If a person flies a large flag on a short flagpole or a small flag on a large flagpole it looks ludicrous. Therefore, we need to give them a guideline to follow so flag displays will look proper. The Flag Code should have covered this a long time ago.

## SECTION A (46)

I receive numerous letters and calls each year asking me why the flag is folded in a triangular shape. It's time we let the whole country know why they are doing so.

I have even put out a special single page item, in color to cover this aspect.

## SECTION B (1)

The majority of our people will always say the flag is at "half-mast" when, actually, in most cases it is really "half-staffed". It is time we fully clarified the two terms.

## SECTION B (2)

The present Flag Code has never informed people on the proper procedure for half-staffing the flag. A good Code should do so.

## SECTION B (3)

This provision will also end great confusion about the term "peak" and should definitely be included in the Flag Code.

## SECTION B (4)

Once more, we can further clarify half-staffing procedures with this provision.

## SECTION B (5)

This fact was only briefly covered in Section 2(d) of the present Flag Code. We need to *expand* on the matter.

## SECTION B (6)

People feel that the flag is supposed to be half-staffed on Veterans Day just as on Memorial Day, but that is completely wrong. Veterans Day is a celebration whereas Memorial Day is one of mourning.

## SECTION B (7)

This fact is not covered in the present Flag Code and it definitely should be.

## SECTION B (8)

I doubt if 1 out of every 10,000 people are aware that Proclamations 3044 and 3948 even exist. Therefore, they can hardly be expected to comply with them, so let's bring them to the attention of the public for once.

There is another point also. Proclamations 3044 and 3948 cover certain Federal Officials, but leave the populace completely up in the air regarding other people of note.

For example, when J. Edgar Hoover died, neither Proclamation applied to his case. My advice to people who called from all parts of the country, for instructions on half-staffing the flag, was to half-staff it from the time of his death until the date of his interment.

I believe this rule should be incorporated into the Flag Code for persons not covered by the Proclamations.

## SECTION B (9)

I have received many calls regarding this aspect of half-staffing the flag when the state, city or other flag is displayed on the *same* flagpole, as is often done.

Obviously, such flags must also be lowered when the United States flag is to be half-staffed, because the United States flag must occupy a place of prominence above other flags of this type.

Let's incorporate such a provision in the new Code to enlighten many confused people across America.

## SECTION C (4)

This has been altered from Section 4 of the present Flag Code and another paragraph has been added to *qualify* the provision, because of the data concerning the Navy.

## SECTION C (5)

I have separated one aspect from Section 5 of the present Flag Code, because it actually requires *clarification* as to the proper saluting.

The whole last paragraph is new, in fact. It covers good, common sense, and has been advocated by flag authorities for a long time.

People certainly do tire of saluting the hundreds or thousands of United States flags in a parade.

Saluting the lead flag in each separate unit of the parade should suffice to adequately show that one is a patriot and loyal to his country.

## SECTION C (7)

This provision has been added to clarify a point of confusion among many Americans who just aren't sure what to do.

## SECTION D

This entire section is new and its inclusion in the Flag Code would certainly benefit countless citizens, especially those belonging to organizations, who aren't positive about *proper* procedures.

## SECTION E (1)

I do receive countless questions on this point. Far too many rumors circulate concerning such flags.

People are afraid they will be considered sacrilegious if they do fly a flag formerly used on a casket, but nothing is farther from the truth.

Let's tell the people it is okay to fly such flags in the new Flag Code.

## SECTION E (3)

There is confusion about the display of the flag on a casket. Let's eliminate it by incorporating this new provision. It is a *custom* which has endured for decades and is still followed, so let's give the public the facts.

## SECTION E (4)

Flags come in so many sizes that the public becomes totally confused. Let's make it easy for them with this new provision.

## SECTION E (5)

No object should be placed on the flag, of course, and we must make it clear that this applies to flags used at funerals, as well. This new provision will fill a definite need.

## SECTION E (6)

Flags placed in Arlington National Cemetery are, removed the next day. Let's encourage the nation to follow this example, so everyone will be in accord.

Too, flags which persons leave longer will not be cared for and will become tattered and soiled and will therefore, have violated provisions of the Federal Flag Code.

## SECTION F (1)

This is an enlargement upon the present Section 4(j) of the Flag Code. It offers *better guidance* than the present paragraph.

That about sums it up for now. If you have any questions or suggestions, let me know.

Yours truly,

RAYMOND B. EDWARDS,  
Director, Americanism—Loyalty.

Enclosures.

The following document is known as the Federal Flag Code. It prescribes proper display of and respect for the United States Flag.

This code does not impose penalties for misuse of the United States Flag. That is left to the states and to the federal government for the District of Columbia. Each state has its own flag code.

These state codes vary considerably in defining what acts do actually constitute desecration of the flag and the terms of imprisonment and the amount of fines imposed run a wide range.

The Federal Flag Code does not supersede these state laws. However, there are Public Laws which do concern misuse of the flag. They are:

(Public Law 90-381; 82 Stat. 191). The text of the law, which makes desecration of the flag a Federal offense punishable by fines of not more than \$1,000.00 or up to one year imprisonment, or both, follows:

## TITLE 18 UNITED STATES CODE

700. Desecration of the flag of the United States; penalties: (a) Whoever knowingly casts contempt upon any flag of the United States by publicly mutilating, defacing, defiling, burning, or trampling upon it shall be fined not more than \$1,000 or imprisoned for not more than one year, or both.

(b) The term "flag of the United States" as used in this section, shall include any flag, standard, colors, ensign, or any picture or representation of either, or of any part or parts of either, made of any substance or represented on any substance, of any size evidently purporting to be either of said flag, standard, colors, or ensign of the United States of America, or a picture or a representation of either, upon which shall be shown the colors, the stars and the stripes, in any number of either thereof, or of any part or parts of either, by which the average person seeing the same without deliberation may believe the same to represent the flag, standards, colors, or ensign of the United States of America.

(c) Nothing in this section shall be construed as indicating an intent on the part of Congress to deprive any State, territory, possession, or the Commonwealth of Puerto Rico of jurisdiction over any offense over which it would have jurisdiction in the absence of this section.

To clarify the above law, the following definitions are listed:

Our National Flag is sometimes referred to as the "National Ensign."

"National Color" or "National Standard."

The "National Ensign" is a term used by the U.S. Navy and indicates the National Flag flown by ships, boats and airships.

The "National Color" refers to U.S. Flags carried by those on foot.

The "National Standard" is carried by persons who are mounted or by mechanized and motorized units.

(Public Law 107, enacted July, 1953) No person shall display the flag of the United Nations or any other national or international flag equal, above, or in a position of superior prominence or honor to, or in place of, the flag of the United States at any place within the United States or any Territory or possession thereof; Provided, That nothing in this section shall make unlawful the continuance of the practice heretofore followed of displaying the flag of the United Nations in a position of superior prominence or honor, and other national flags in positions of equal prominence or honor, with that of the flag of the United States at the headquarters of the United Nations or at any place at which any official meeting or proceeding of the United Nations is in progress. Whoever knowingly violates the provisions of this section shall be fined not more than \$250 or imprisoned not more than six months, or both.

#### SEC. A. DISPLAY OF THE FLAG

- (1) The flag should always be hoisted briskly and lowered ceremoniously.
- (2) The flag may be displayed on any day of the year but citizens are particularly urged to fly them on the following holidays and special occasions: New Years Day, January 1; Presidential Inauguration Day, January 20; Lincoln's Birthday, February 12; Washington's Birthday, 3rd Monday in February; Easter Sunday; Loyalty Day, May 1; Mother's Day, 2nd Sunday in May; Armed Forces Day, 3rd Saturday in May; Memorial Day (half-staff until noon, then full-staff to sunset) the last Monday, in May; Flag Day, June 14; Father's Day, third Sunday in June; Independence Day, July 4; Labor Day, first Monday in September; Constitution Day, September 17; Columbus Day, 2nd Monday in October; Veterans Day, 4th Monday in October; Thanksgiving Day, 4th Thursday in November; Bill of Rights Day, December 15; Christmas Day, December 25; also for state and local holidays and Statehood Days for commemoration of admission to the Union; also upon all election days and other such occasions as may be proclaimed by the President of the United States.
- (3) The flag should be displayed daily, on or near the main administration building of every public institution.
- (4) The flag should be displayed in or near every polling place on election days.
- (5) The flag should be displayed during school days in or near every school-house.
- (6) The flag may be flown 24 hours per day, if so desired. Proper periodic inspections must be undertaken, however, to insure that the flag is never flown in a tattered or soiled condition.
- (7) The flag may be flown at night. In such instances the flag should be illuminated so it will be visible.
- (8) The flag may be flown in inclement weather, provided it is made of waterproof material.
- (9) No flag of any other nation will be carried in a parade or procession in this country unless the United States flag is also present.
- (10) When two or more flags are staffed before the entrance of a building, the United States flag must be on the left, as observed from the street.
- (11) When carried in a procession with another flag or flags, the United States flag must be either on the marching right; that is, the flag's own right, or, if there is a line of other flags, in front of the center of that line.
- (12) When flags of two or more nations are displayed, they are to be flown from separate staffs of the same height. The flags must be of approximately equal size. International usage forbids the display of the flag of one nation above that of another nation in time of peace.
- (13) When flags of states, cities, or localities, or pennants of societies are flown on the same halyard with the flag of the United States, the latter must always be at the peak. When the flags are flown from adjacent staffs, the flag of the United States must be hoisted first and lowered last. No such flag or pennant may be placed above the flag of the United States or to the right of the flag of the United States.
- (14) No other flag or pennant should be placed above or, if on the same level, to the right of the flag of the United States of America, except during church services conducted by naval chaplains at sea when the church pennant



may be flown above the flag during church services for the personnel of the Navy. (See Public Law 107.)

(15) When the flag of the United States is displayed from a staff projecting horizontally or at an angle from the window sill, balcony, or front of a building, the union of the flag must be placed at the peak of the staff unless the flag is at half staff. When the flag is suspended over a sidewalk from a rope extending from a house to a pole at the edge of the sidewalk, the flag must be hoisted out, union first, from the building.

(16) When the flag is displayed over the middle of the street, it must be suspended vertically with the union to the north in an east and west street or to the east in a north and south street.

(17) The flag must not be draped over the hood, top, sides, or back of a vehicle or of a railroad train or a boat.

(18) The flag must never be carried flat or horizontally, but always aloft and free.

(19) The flag must not be displayed on a float in a parade except from a staff, or as provided in subsection 20.

(20) When the flag is displayed otherwise than by being flown from a staff, it must be displayed flat, whether indoors or out, or so suspended that its folds fall as free as though the flag were staffed.

(21) The flag must never have placed upon it, nor on any part of it, nor attached to it any mark, insignia, letter, word, figure, design, picture, symbol, slogan or drawing of any nature.

(22) The blue field (union) of the flag must contain only the correct number of stars representing the states in the union. The stars will be properly arranged in a design which has been officially approved by the Federal government.

(23) The flag must never be used for advertising purposes in any manner whatsoever. It must not be embroidered on such articles as cushions or handkerchiefs and the like, printed or otherwise impressed on paper napkins or boxes or anything that is designed for temporary use and discard; or used as any portion of a costume or athletic uniform. Advertising signs must not be fastened to a staff or halyard from which the flag is flown.

(24) The flag must never be used as a receptacle for receiving, holding, carrying or delivering anything. During parades, it will not be utilized as a means of gathering coins tossed by a crowd, even for charitable purposes.

(25) The flag must never be used as drapery of any sort whatsoever, never festooned, drawn back, nor up, in folds, but always allowed to fall free. Bunting of blue, white and red, always arranged with the blue above, the white in the middle, and the red below, must be used for covering a speaker's desk, draping the front of a platform, and for decoration in general. When bunting is displayed *vertically*, the blue will be to the observer's left, white in the center and red on the right.

(26) The flag must never touch anything beneath it, such as the ground, the floor, water, or merchandise.

(27) The flag must never be displayed with the union down save as a signal of dire distress. Personal feelings or group reactions over domestic or foreign affairs do not constitute dire distress under this Code.

(28) The flag must never be fastened, displayed, used, or stored in such a manner as will permit it to be easily torn, soiled, or damaged in any way.

(29) It is illegal to carry the flag of any nation, engaged in warfare against the United States, during any parade, procession or ceremony at any time, in this country.

(30) When used on a speaker's platform, the flag, if displayed flat, must be displayed above and behind the speaker.

(31) The U.S. Flag must be staffed to the right of the speaker if he is on a platform (raised surface above the level of the audience); otherwise the U.S. Flag is staffed to the right (front) of the audience.

(32) The flag must never be used as a desk or table covering, nor have any object placed upon it.

(33) When the flag is hung flat against a wall, whether hung horizontally or vertically, the flag's blue field is to the flag's own right, or to the observer's left as he faces the flag.

(34) When the flag is displayed above an honor roll it should be hung flat or suspended so its folds fall free. The flag should not be draped, festooned nor allowed to touch the honor roll.



(35) When displayed in a school classroom the flag must be hung flat against the wall behind the teacher's station or, if staffed and on the same level with students, the flag must be to the student's right as they face the front of the room.

(36) The flag of the United States of America, when it is displayed with another flag against a wall from crossed staves, must be on the right, the flag's own right, and its staff must be in front of the staff of the other flag.

(37) The flag of the United States of America must be at the center and at the highest point of the group when a number of flags of States or localities or pennants of societies are grouped and displayed from staffs.

(38) The flag must not be used as a covering for a ceiling.

(39) The flag can form a distinctive feature of the ceremony of unveiling a statue or monument, but it must never be used as the covering for the statue or monument.

(40) Though it is always preferable to fly an up-to-date flag, it is not illegal to fly an older version of the flag, having less stars, provided the flag is still in good condition.

(41) Antenna flags may be properly displayed on motor vehicles. However, such flags must be treated with the same care and respect shown to full-size United States flags. Soiled or torn flags of this nature should be cleaned or destroyed if beyond repair.

(42) United States flag patches may be worn, but not in any position on the clothing which would indicate contempt for the flag, or the country it represents, such as on the knees or the seat of one's pants.

(43) Flag buttons or flag pins may be worn, if they properly depict the United States flag as approved by the Federal government.

(44) The use of ornaments on flag-staffs should be limited to the spear, ball, eagle, acorn or lance. The eagle and globe combination should not be used on flag-staffs by civilians and civilian organizations as it is generally reserved for the Presidential flag and colors.

(45) To determine the size of a flag be in relation to the flagpole figure 25 percent of the height of the pole from the ground as the correct length for the flag.

Conversely, the flagpole from ground-level to the top of the staff should be at least 3 or 4 times the length of the flag.

(46) When our flag is lowered and folded it will be folded into a triangular shape to symbolize hats which were worn by soldiers of the American Revolution.

#### SEC. B. HALF-STAFFING THE FLAG

(1) On land, the flag is flown on a staff while on sea it is flown on a mast. Therefore we say the flag is half-staffed on land and it is at half-mast aboard ship.

(2) When placing the flag at half-staff, it should be hoisted to the peak for an instant and then lowered to the half-staff position. Before the flag is lowered for the day it should be raised briefly to the peak.

(3) The peak is the highest point to which the flag can be raised. The top of a ball, or the end of a spike topping a flag-staff is therefore *not* the peak of the staff.

(4) The correct position of the flag at half-staff is not necessarily half way down the staff. It should be at a suitable height down from the top, depending on the size of the flag and the height of the pole, to indicate that it is half-staffed.

(5) On Memorial Day, even without a Presidential Proclamation, the flag is displayed at half-staff from sunrise until noon and at full-staff from noon until sunset. The President can specifically proclaim that it be half-staffed from sunrise to sunset, however.

(6) The flag is not half-staffed on Veterans Day, because this occasion, originally known as Armistice Day, was a day of celebration, not of mourning.

(7) It is proper to salute and to Pledge Allegiance to the half-staffed flag.

(8) Presidential Proclamation No. 5044 issued March 1, 1954 and amending Proclamation 3948 issued December 12, 1969 prescribe certain rules for the duration of display of the United States flag, at half-staff by Federal Authorities on Federal buildings, grounds, etc., upon the death of a President and certain designated other Federal Officials. These Proclamations have been supplemented by Orders issued by Presidents at the deaths of other leading citizens.

not covered by the proclamations, as a mark of official tribute to their service to the country.

When the duration of display of the flag at half-staff is not specified in Proclamation 3044 or in 3948, the flag will be half staffed from the time of death until the time of interment.

Only the President of the United States, either directly through proclamation or executive order, or indirectly through automatic operation of Proclamation 3044 or 3948, has the authority to order the flag to be flown at half-staff on Federal Government buildings, grounds and facilities and naval vessels.

These Proclamations and Orders do not apply as a matter of law, to the display of the flag at half-staff by private individuals, State Officials, or organizations, but is frequently used as a guide by them.

The decision as to flying the flag at half-staff on any other buildings (other than Federal buildings) rests with the person who owns or is responsible for the property on which the flag is displayed.

(9) When another flag or pennant is flown on the same flagpole with the flag of the United States and the U.S. Flag is half-staffed, the other flag must also be lowered to a position beneath the U.S. flag.

#### SEC. C. SALUTING

(1) When saluting the flag, persons in uniform will render the military salute (fingertips of the right hand to this cap). Men in civilian dress will place the right hand over the heart (holding hat, if one is worn, at the left shoulder). Women in civilian dress will salute by placing the right hand over the heart. These rules also apply to children.

(2) When the flag is *displayed* during the playing of the National Anthem, all persons present should stand and face the flag. Those in uniform will render the military salute—retaining that position until the last note is played.

Women and uncovered men place their right hands over their hearts. Men with hats will remove them and hold them at their left shoulder—their right hands being over their hearts.

The same rules apply to children.

(3) When the National Anthem is played and the flag is not displayed, all persons present will stand and face the music. Those in uniform will render the military salute. They will salute at the sound of the first note and hold the salute until the last note is played.

All others should stand at attention, men removing their hats.

(4) "Do not dip the Flag of the United States to any person or thing. Regimental colors, state, organization or institutional flags will render that honor."

However, a U.S. Nat. ship, upon receiving a salute by the dipping of the flag from a vessel registered by a national which is formally recognized by the U.S. must return the compliment dip for dip.

(5) When the flag passes by in a parade, the same rules apply as when the flag is being hoisted or lowered. All persons should stand and salute.

Uniformed persons will render the military salute—holding it until the flag has passed their position. Women and uncovered men will place their right hands over their hearts. Men wearing hats should remove them and hold them at the left shoulder—the right hand being over the heart.

Technically, a person should rise and salute each of the many United States Flags carried in a parade, but it is acceptable to salute the lead flag in each unit of the parade and stand at attention as the other U.S. Flags within a unit pass by.

(6) The following is designated as the Pledge of Allegiance to the flag: "I pledge allegiance to the flag of the United States of America and to the Republic for which it stands, one Nation under God, indivisible, with liberty and justice for all."

Such pledge should be rendered by standing with the right hand over the heart. However, civilians will always show full respect to the flag when the pledge is given by merely standing at attention, men removing the headdress. Persons in uniform shall render the military salute.

(7) It is proper for one to voice the Pledge of Allegiance while at the right hand salute.

#### SEC. D. CARRYING THE FLAG

(1) When carrying a staffed flag it is proper to hold the staff with one or both hands in front of the center of the body, the base of the staff resting

against the body and the staff sloping upward, and forward at an angle of about 30 degrees from the body.

(2) The flag bearer should only hold the flag against the staff when lowering the staff through a doorway. Otherwise, the flag should hang free.

(3) When the flag is being carried into room and placed in its stand, everyone should stand, facing the platform. The color bearer, followed by escort, marches to the front and faces the audience. Escort takes position on either side of the flag bearer. With proper salute the audience pledges Allegiance to the flag. The National Anthem may be sung. The flag bearer then places flag in its stand. As bearer and escort start to leave, the audience is seated.

(4) When the flag is carried at the side of the body, the staff is held vertically in the right hand, gripped between thumb and forefinger, back of hand to the right, arm extended downward, the staff resting against the outer side of the shoulder, base of staff about midway between the hip and knee.

(5) No religious, organizational or sectional emblem will precede the United States flag in a procession.

(6) The United States flag will not be carried back over the shoulder of a bearer.

#### SEC. E. THE FLAG AND THE DEAD

(1) The U.S. flag may be displayed or flown after it has been used as a casket cover. The U.S. Flag belongs to all the people. Placing the flag upon the casket of one who defended it is a gesture of gratitude by the people in honor of the deceased. After the flag has been used to honor the dead it should be displayed or flown as the emblem of all Americans.

(2) When the flag is used to cover a casket, it should be so placed that the union is at the head and over the left shoulder. The flag should not be lowered into the grave or allowed to touch the ground.

(3) The flag is reversed on the casket, with the blue field (union) to the observer's right, instead of the left, to indicate mourning.

(4) The regulation size of the flag upon the casket of a deceased veteran is seven feet long by 4½ feet wide, with hemmed heading. Such a flag will be made available, without cost, by either the local postmaster or Veterans Administration facility.

(5) It is not proper to place a pall, wreath, flowers, lodge emblem or other object on the flag of the United States covering the casket.

(6) Flags on staffs, which are placed on graves on specific occasions should be removed the following day, i.e., Memorial Day.

#### SEC. F. CONCLUSION

(1) Never destroy a U.S. Flag in public ceremony. When the Flag is so badly torn, soiled or faded that it is no longer a fitting emblem for display the Flag should be destroyed in private, preferably by burning and without ceremony. A torn Flag may be mended, or if soiled it may be washed or dry cleaned. Hang it for drying in a manner as not to suggest carelessness or disrespect.

(2) Any rule or custom pertaining to the display of the flag of the United States of America, set forth herein, may be altered, modified, or repealed, or additional rules with respect thereto may be prescribed, by the Commander-in-Chief of the Army and Navy of the United States, whenever he deems it to be appropriate or desirable; and any such alteration or additional rule shall be set forth in a proclamation.

[The following resolutions were adopted at the 74th national convention of the Veterans of Foreign Wars of The United States held in New Orleans, La., August 17 through 24, 1973.]

#### RESOLUTION No. 110.—RESPECT FOR OUR FLAG

Whereas there is an alarming tendency for our citizens to fail to show proper respect for the Flag of the United States during parades and other patriotic observances; and

Whereas many homes and commercial establishments fail to display the Flag on Memorial Day, Fourth of July, Veterans Day and other patriotic days; now:

Therefore be it  
*Resolved by the 74th National Convention of the Veterans of Foreign Wars of the United States*, That we call upon all citizens to render proper respect to the Flag of the United States on all occasions, and that by precept and example

V.F.W. members and the Ladies Auxiliary lead the way by displaying at our homes the Flag of the United States on all patriotic days, and that we pay proper tribute to the Flag at all times.

RESOLUTION No. 113.—RESPECT FOR NATIONAL ANTHEM AT PUBLIC GATHERINGS

Whereas since the adoption of the Star Spangled Banner as our national anthem, it has become traditional to sing, and, or play it at the opening of all sporting events and other large public affairs; and

Whereas in recent years there have been many instances of disrespect shown our flag and national anthem by a small minority of our citizens. Because of this some high officials in the sporting world have proposed that the practice of playing the national anthem at the beginning of major sports events be discontinued, except on very special occasions; and

Whereas, we believe that the vast majority of our citizens not only favor the playing of our national anthem at these events but also are proud to demonstrate their love and respect of country by standing at attention, uncovered until the last notes of the Star Spangled Banner have died away: Now, therefore, be it

*Resolved by the 74th National Convention of the Veterans of Foreign Wars of the United States.* That we vigorously oppose this abject surrender of our national traditions to this small disrespectful minority of our citizens; and be it further

*Resolved.* That a respectful rendition of our national anthem be presented at our nation's sporting events and other large public gatherings to foster an atmosphere of patriotism and provide a source of inspiration to all loyal citizens in attendance.

RESOLUTION No. 116.—FLY THE FLAG OF THE UNITED STATES DAY AND NIGHT AT VA HOSPITALS

Whereas, it is only appropriate that all Americans demonstrate their respect, appreciation and concern for our veterans, who in the performance of their duties while serving their country, have and are suffering untold pain and agonies; and

Whereas, our respect, appreciation and concern can best be acknowledged and symbolized by the permanent display and lighting of the American Flag at all Veterans Hospitals throughout the Nation; and

Whereas, the spot lighting of Old Glory could serve to inspire and illuminate many dark and lonely hours experienced by our veterans. Perhaps as they look out into the darkness of the night and see Old Glory lit up as a special tribute to them, it could also serve as a perpetual reminder of our concern and love for them: Now, therefore be it

*Resolved by the 74th National Convention of the Veterans of Foreign Wars of the United States.* That the President of the United States and the National Director of the Veterans Administration be urged to consider and encourage the nocturnal display of the flag of our country at all Veterans Hospitals, illuminated with a guiding light of hope for Peace and Unity from dusk to dawn.

Mr. Charles E. Mattingly, deputy legislative director of The American Legion, will be our next witness. He will be accompanied by Mr. Charles E. Masters, assistant Americanism director.

Mr. O'Connor, are you also among this group?

Mr. O'CONNOR. Yes, I am.

Senator HUTSKA. That is fine.

You have filed with the subcommittee a copy of your statement. Suppose you read that statement and then we will include in the record following your statement the copies of the resolutions which are attached to your statement. We will print those in full.



TESTIMONY OF DANIEL J. O'CONNOR, CHAIRMAN, NATIONAL AMERICANISM COMMISSION, THE AMERICAN LEGION, ACCOMPANIED BY CHARLES E. MATTINGLY, DEPUTY LEGISLATIVE DIRECTOR, THE AMERICAN LEGION, AND CHARLES E. MASTERS, ASSISTANT AMERICANISM DIRECTOR, THE AMERICAN LEGION

Mr. O'CONNOR. The American Legion and the American Legion Auxiliary appreciate the opportunity of appearing before your subcommittee to express their views on the need for revision of our Federal flag code (Public Law 829), to offer suggested amendments, and to recommend the establishment of a national flag commission.

For the past 11 years, I have served as chairman of The American Legion's National Americanism Commission which has, as a part of its total program activities, the responsibility for The American Legion's patriotic programs, one of which is flag education. We conduct flag education programs in our schools through our 16,000 local Posts of The American Legion and provide various publications dealing with flag etiquette to the general public, as well as to the nearly 4 million members of The American Legion and American Legion Auxiliary. I have in my hand, Mr. Chairman, The American Legion publication on "Let Us Be Right on American Flag Etiquette." We would appreciate you making it a part of the record, Mr. Chairman.

Senator HRTSKA. We would like to have it for our record, or for our files. Pertinent parts of it will be printed in the record subject to the selection of our staff with your assistance.

Mr. O'CONNOR. Thank you.

[The above-referred-to publication may be found in the files of the Subcommittee on Federal Charters, Holidays and Celebrations.]

Mr. O'CONNOR. For several years we have been besieged with letters and telephone calls at our National Headquarters by individuals, churches, schools, private organizations, and businesses asking advice on matters relating to proper display and use of the flag. These inquiries have come about because of the vagueness of some sections of the flag code and misinterpretation on the part of the public.

The American Legion has conducted extensive research in an effort to obtain suitable information to modernize and make more concise the existing flag code, as well as to provide additions for situations not covered by present law.

The 1971 and 1972 National Conventions of The American Legion and American Legion Auxiliary have incorporated the results of this research into form of resolutions which were unanimously adopted. A copy of the most recent of these resolutions adopted at our National Convention in Chicago, Illinois, August 22-24, 1972, which proposes specific amendments to the flag code and urges the establishment of a national flag commission, is attached to my statement.



It is somewhat of a paradox as we approach the bicentennial celebration of the founding of our Nation that our citizens find themselves in a state of confusion regarding the use and display of the honored symbol of our Nation.

Another factor that has contributed substantially to the confusion of our citizens over proper display and usage of the flag in the fact that the various States have their own flag laws with varying provisions, some of which have been found to be unconstitutional. If our flag is truly to be a national flag, then regulations concerning its usage and penalties for its desecration should be established by our Federal Government. A modernized and concise Federal flag code should serve as a model for individual State laws, thus providing uniformity and minimizing controversy.

The membership of The American Legion, all of whom are war-time veterans, have come to know the real meaning of the symbol of our country and have expressed keen disappointment that the flag code has not been updated. We are at a point in the history of our country when we need to take every step possible to rekindle patriotism and reestablish a sense of national unity among our citizenry. We believe that updating the flag code, which in its present form has contributed to controversy and dilution of patriotism, can be helpful in achieving these goals. For these reasons, Mr. Chairman, The American Legion hopes that your subcommittee will favorably recommend S.J. Res. 91 to the full committee to permit the amendments called for therein to be approved and implemented at the earliest possible date. As you know, we must move forward with this project immediately if we are to have time to acquaint the public with an updated flag code prior to the bicentennial in 1976.

The establishment of a national flag commission also has the strong support of The American Legion. Such a commission would provide a permanent forum for the military, patriotic organizations and private citizens to present their views and recommendations for additional improvements in the flag code as the need for such is demonstrated in the future.

Mr. Chairman, speaking for The American Legion and the American Legion Auxiliary, I urge the subcommittee's favorable action of S.J. Res. 91. In view of the short time available prior to the bicentennial, I would urge this legislation be handled in the most expeditious manner.

Thank you for this opportunity to present The American Legion's views on this important subject.

[The above-referred-to attachments follow:]

#### THE AMERICAN LEGION

54th National Convention, held at Chicago, Illinois, August 22-24, 1972

Resolution No. 87

Committee: Americanism

Title: Revision of Public Law 829-77 (Flag Code)

Whereas, The United States Congress has approved Public Law 829, and amendments thereto, for the purpose of codification of existing rules and customs pertaining to display of the Flag of the United States of America; and

Whereas, The clarity of said Public Law 829 and its amendments is left to the multitude of interpretations which this resolution hopefully will correct; Now, therefore, be it

*Resolved* by *The American Legion* in National Convention assembled in Chicago, Illinois, August 22, 23, 24, 1972, that Section 2(a) of Public Law 829, which reads as follows:

"It is the universal custom to display the flag only from sunrise to sunset on buildings and on stationary flag-staffs in the open. However, the flag may be displayed at night upon special occasions when it is desired to produce a patriotic effect."

be amended to read as follows:

It is the universal custom to display the flag only from sunrise to sunset on buildings and on stationary flag-staffs in the open. However, the flag may be displayed 24 hours per day if properly illuminated during the hours of darkness when a patriotic effect is desired.

and, be it further

*Resolved*, That Section 2(c) which reads as follows:

"The flag should not be displayed on days when the weather is inclement," be amended to read as follows:

The flag should not be displayed on days when the weather is inclement, except when an all-weather flag is displayed

and, be it further

*Resolved*, That Section 2(d) which reads as follows:

"The flag should be displayed on all days when the weather permits especially on New Year's Day, January 1; Inauguration Day, January 20; Lincoln's Birthday, February 12; Washington's Birthday, the third Monday in February; Easter Sunday (variable); Mother's Day, second Sunday in May; Armed Services Day, third Saturday in May; Memorial Day (half-staff until noon), the last Monday in May; Flag Day, June 14; Independence Day, July 4; Labor Day, first Monday in September; Citizenship Day, September 17; Columbus Day, the second Monday in October; Veterans Day, the fourth Monday in October; Thanksgiving Day, fourth Thursday in November; Christmas Day, December 25; such other days as may be proclaimed by the President of the United States, the birthdays of States (dates of admission); and on State holidays."

be amended to read as follows:

The flag should be displayed on all days, especially on New Year's Day, January 1; Inauguration Day, January 20; Lincoln's Birthday, February 12; Washington's Birthday, the third Monday in February; Easter Sunday (variable); Mother's Day, second Sunday in May; Armed Forces Day, third Saturday in May; Memorial Day (half-staff until Noon), on the last Monday in May; Flag Day, June 14; Independence Day, July 4; Labor Day, first Monday in September; Citizenship Day, September 17; Columbus Day, the second Monday in October; Veterans Day, the fourth Monday in October; Thanksgiving Day, fourth Thursday in November; Christmas Day, December 25; such other days as may be proclaimed by the President of the United States; the birthdays of States (dates of admission); and on State holidays.

and, be it further

*Resolved*, That Section 2(e) which reads as follows:

"The flag should be displayed daily, weather permitting on or near the main administration building of every public institution," be amended to read as follows:

The flag should be displayed daily on or near the main administration building of every public institution.

and, be it further

*Resolved*, That Section 3(h) which reads as follows:

"The flag should not be draped over the hood, top, sides, or back of a vehicle or of a railroad train or a boat. When the flag is displayed on a motor car, the staff shall be fixed firmly to the chassis or clamped to the radiator cap."

be amended to read as follows:

The flag should not be draped over the hood, top, sides, or back of a vehicle or of a railroad train or a boat. When the flag is displayed on a motor car, the staff shall be fixed firmly to the chassis or clamped to the right fender.

and, be it further

*Resolved*, That Section 3(f) which reads as follows:

"When flags of States, cities, or localities, or remnants of societies are flown on the same halyard with the flag of the United States, the latter should always

be at the peak. When the flags are flown from adjacent staffs, the flag of the United States should be hoisted first and lowered last. No such flag or pennant may be placed above the flag of the United States or to the right of the flag of the United States."

be amended to read as follows:

When flags of States, cities, or localities, or pennants of societies are flown on the same halyard with the flag of the United States, the latter should always be at the peak. When the flags are flown from adjacent staffs, the flag of the United States should be hoisted first and lowered last. No such flag or pennant may be placed above the flag of the United States or to the right of the flag of the United States, its own right, and, be it further

*Resolved*, That Section 3(k) which reads as follows:

"When used on a speaker's platform, the flag, if displayed flat, should be displayed above and behind the speaker. When displayed from a staff in a church or public auditorium, if it is displayed in the chancel of a church, or on the speaker's platform in a public auditorium, the flag should occupy the position of honor and be placed at the clergyman's or speaker's right as he faces the congregation or audience. Any other flag so displayed in the chancel or on the platform should be placed at the clergyman's or speaker's left as he faces the congregation or audience. But, when the flag is displayed from a staff in a church or public auditorium elsewhere than in the chancel or on the platform it shall be placed in the position of honor at the right of the congregation or audience as they face the chancel or platform. Any other flag so displayed should be placed on the left of the congregation or audience as they face the chancel or platform."

be amended to read as follows:

When used on a speaker's platform, the flag, if displayed flat, should be displayed above and behind the speaker. When displayed from a staff in a church or public auditorium, the flag of the United States of America should hold the position of superior prominence, in advance of the audience, and in the position of honor at the clergyman's or speaker's right as he faces the audience. Any other flag so displayed should be placed on the left of the clergyman or speaker or to the right of the audience, and, be it further

*Resolved*, That Section 3(i) which reads as follows:

"When the flag is being displayed otherwise than being flown from a staff, it should be displayed flat, whether indoors or out, or so suspended that its folds fall as free as though the flag were staffed."

be amended to read as follows:

When displayed either horizontally or vertically against a wall, the union should be uppermost and to the flag's own right; that is, to the observer's left. When displayed in a window, the flag should be displayed in the same way with the union or blue field to the left of the observer in the street, and, be it further

*Resolved*, That Section 3(m) which reads as follows:

"The flag, when flown at half-staff, should be first hoisted to the peak for an instant and then lowered to the half-staff position. The flag should be again raised to the peak before it is lowered for the day. By 'half-staff' is meant lowering the flag to one-half the distance between the top and bottom of the staff. Crepe streamers may be affixed to spearheads or flag-staffs in a parade only by order of the President of the United States."

be amended to read as follows:

The flag, when flown at half-staff, should be first hoisted to the peak for an instant and then lowered to the half-staff position. The flag should be again raised to the peak before it is lowered for the day. By "half-staff," it is meant lowering the flag to one-half the distance between the top and bottom of the staff. On Memorial Day the flag should be displayed at half-staff until noon only, then raised to the top of the staff. By order of the President of the United States, the National flag shall be flown at half-staff upon the death of principal figures of the United States Government and the Governor of a State, Territory or possession, as a mark of respect to their memory. In the event of the death of other officials or foreign dignitaries, the flag is to be displayed at half-staff according to Presidential instructions or orders, or "in accordance with recognized customs or practices not inconsistent with law." The Governor of a state may proclaim the National flag to be flown at half-staff upon the death of present

officials and former officials of State Government. The flag shall be flown at half-staff: Thirty days from the day of death of the President or a former President; ten days from the day of death of the Vice President, the Chief Justice or a retired Chief Justice of the United States, or the Speaker of the House of Representatives; from the day of death until interment of an Associate Justice of the Supreme Court, a member of the cabinet, a former Vice President, the Secretary of the Army, the Navy, or the Air Force, or the Governor of a State, Territory, or possession and on the day of death and the following day for a U.S. Senator, U.S. Representative, or the Resident Commissioner of Puerto Rico, and, be it further

*Resolved*, That Section 3(a) be added to read as follows:

When the flag is suspended across a corridor or lobby in a building with only one main entrance, it should be suspended vertically with the union of the flag to the observer's left upon entering. If the building has more than one main entrance, the flag should be suspended vertically near the center of the corridor or lobby with the union to the North, when entrances are to the East and West or to the East when entrances are to the North and South; if there are entrances in more than two directions, the union should be to the East, and, be it further

*Resolved*, That Section 4(a) which reads as follows:

"The flag should never be displayed with the union down save as a signal of dire distress."

be amended to read as follows:

The flag should never be displayed with the union down, except as a signal of dire distress, that is, only in instances of extreme danger to life or property, and, be it further

*Resolved*, That Section 4(d) which reads as follows:

"The flag should never be used as drapery of any sort whatsoever, never festooned, drawn back, nor up, in folds, but always allowed to fall free. Bunting of blue, white and red, always arranged with the blue above, the white in the middle, and the red below, should be used for covering a speaker's desk, draping the front of a platform, and for decoration in general."

be amended to read as follows:

The flag should never be used as wearing apparel, bedding, drapery, etc. It should never be festooned, drawn back, nor up, in folds, but always allowed to fall free. Bunting of blue, white and red, always arranged with the blue above, the white in the middle and the red below, should be used for covering a speaker's desk, draping the front of a platform, and for decoration in general, and, be it further

*Resolved*, That Section 4(e) which reads as follows:

"The flag should never be fastened, displayed, used or stored in such a manner as will permit it to be easily torn, soiled, or damaged in any way."

be amended to read as follows:

The flag should never be fastened, displayed, used, or stored in such a manner as to permit it to be easily torn, soiled, or damaged in any way, and, be it further

*Resolved*, That Section 4(i) which reads as follows:

"The flag should never be used for advertising purposes in any manner whatsoever. It should not be embroidered on such articles as cushions or handkerchiefs and the like, printed or otherwise impressed on paper napkins or boxes or anything that is designed for temporary use and discard; or used as any portion of a costume or athletic uniform. Advertising signs should not be fastened to a staff or halyard from which the flag is flown."

be amended to read as follows:

The flag should never be used for advertising purposes in any manner whatsoever. It should not be embroidered on such articles as cushions or handkerchiefs and the like, printed or otherwise impressed on paper napkins or boxes or anything that is designed for temporary use and discard. Advertising signs should not be fastened to a staff or halyard from which the flag is flown, and, be it further

*Resolved*, That Section 4(j) be referred to hereafter as Section 4(k) and that Section 4(i) will now read as follows:

The flag should never be used as a costume or athletic uniform or any portion thereof. However, a flag patch may be affixed to the uniform of military

personnel, firemen, policemen, and members of patriotic organizations. The flag represents a living country and is itself considered a living thing, therefore, the Lapel Flag Pin being a replica shall be worn on the left lapel near the heart, and, be it further

*Resolved*, That Section 5 which reads as follows:

"That during the ceremony of hoisting or lowering the flag or when the flag is passing in a parade or in a review, all persons present should face the flag, stand at attention, and salute. Those present in uniform should render the military salute. When not in uniform, men should remove the headdress with the right hand holding it at the left shoulder, the hand being over the heart. Men without hats should salute in the same manner, at attention. Women should salute by placing the right hand over the heart. The salute to the flag in the moving column should be rendered at the moment the flag passes,"

be amended to read as follows:

"That during the ceremony of hoisting or lowering the flag or when the flag is passing in a parade or in review, all persons present should face the flag, stand at attention and salute. Those present in uniform should render the military salute. When not in uniform, men should remove their headdress with their right hand and hold it at the left shoulder, the hand being over the heart. Men without hats should salute in the same manner. Aliens should stand at attention. Women should salute by placing the right hand over the heart. The salute to the flag in the moving column should be rendered at the moment the flag passes, and, be it further

*Resolved*, That Section 7 which reads as follows:

"That the Pledge of Allegiance to the Flag, 'I pledge allegiance to the Flag of the United States of America and to the Republic for which it stands, one Nation under God, indivisible, with liberty and justice for all.' Such pledge should be rendered by standing with the right hand over the heart. However, civilians will always show full respect to the Flag when the pledge is given by merely standing at attention, men removing the headdress. Persons in uniform shall render the military salute,"

be amended to read as follows:

"That the Pledge of Allegiance to the Flag, 'I pledge allegiance to the Flag of the United States of America and to the Republic for which it stands, one Nation under God, indivisible, with liberty and justice for all,' be rendered by standing with the right hand over the heart. Men should remove their headdress and hold over the heart. Men without hats should salute in the same manner. Persons in uniform shall render the military salute, and, be it further

*Resolved*, That Section 8 be amended by the addition of Section 8(a) and that Section 8 as it now reads become Section 8(b). Section 8(a) will read as follows:

The Commander in Chief of the Armed Forces of the United States of America shall appoint a National Flag Commission for the purpose of necessary study and revision of the Flag Code, "Public Law 829,"

and, be it further

*Resolved*, That Section 9 be added for the purpose of a penalty clause, said clause to be known as Disrespect to the Flag of the United States of America, with Section 9 to read as follows:

Whoever knowingly casts contempt upon any flag of the United States of America by publicly showing disrespect contrary to Public Law 829 (Flag Code) shall be fined not more than \$1,000 or imprisoned for not more than one year, or both.

The term, "flag of the United States," as used in this section, shall include any flag, standard, colors, ensign, or any picture or representation of either, or of any part or parts of either, made of any substance or represented on any substance, of any size evidently purporting to be either of said flag, standard, colors, or ensign of the United States of America, or a picture or a representation of either, upon which shall be shown the colors, the stars and the stripes, in any number of either thereof, or of any part or parts of either, by which the average person seeing the same without deliberation may believe the same to represent the flag, standards, colors, or ensign of the United States of America, and, be it further

*Resolved*, That this resolution shall supersede all prior resolutions and become the adopted policy of The American Legion and its National Americanism Commission as it relates to Public Law 829 (Flag Code), and with all prior



resolutions pertaining to the Flag Code being rescinded as of the date of adoption of this resolution.

Senator HRTSKA. The bill to which you refer also calls for the creation of a commission, as you know.

Mr. O'CONNOR. Yes, Mr. Chairman.

Senator HRTSKA. What comments would you have on that?

Mr. O'CONNOR. We believe very strongly in the formation of a flag commission which could serve as the medium to which patriotic and civic groups and any citizen could present his views. It would serve, in my judgment, as the instrument for the Congress of the United States in the years to come to receive recommendations and further updating of the U.S. flag code. We, therefore, strongly urge the creation of a flag commission.

Senator HRTSKA. Section 8(a) is the section to which I referred, the Commander in Chief of the Armed Forces of the United States shall appoint a national flag commission for the purpose of the necessary study and revision of this joint resolution.

As I understand it, your position is that you want to support the content and substance of S.J. Res. 91?

Mr. O'CONNOR. Except that I would like to make this comment: It is important that the flag commission be established, and if the legislative branch of the U.S. Government takes the lead in the creation of a commission, the American Legion would gladly support it, and this I so state. It is not our position that it must be appointed by the President. After all, we have gone to the Office of the White House. For example, I attended a session 5 years ago with the President's counsel, in the hope that these recommendations which have been formulated in S.J. Res. 91 and which in substance were written by the American Legion and adopted at national conventions would be adopted without any penal provision by proclamation. But there has been no action. We are very grateful to you, Mr. Chairman, and to this Senate Judiciary Subcommittee, for this opportunity because you have recognized what we have been striving to do. Therefore, if the flag commission is a creation of the Congress of the United States, we would gladly support it.

Senator HRTSKA. Would you be in favor of attaching a provision imposing criminal penalties for violation of a provision of the code?

Mr. O'CONNOR. Mr. Chairman, that is a difficult question to answer.

Senator HRTSKA. It is indeed, that is why I want some enlightenment on it.

Mr. O'CONNOR. Let me say this: We believe there should be some minor penalties somewhere included. However, if it means sacrificing the legislation and not having it achieved by bicentennial year 1976, I think it is a matter which might require very intense study by counsel. Therefore, we would not hesitate to recommend the adoption of legislation for a flag commission and the revisions of the flag code, with a view to later on provide some type of sanction on the minor penalties. We are not talking about the major ones, because President Johnson already signed into law a specific sanction against those who would commit major crimes against the flag. When I say major crimes, I mean burning the flag, for example.

in Central Park in New York City in effigy, ridiculing the President of the United States, referring to the Commander in Chief as a murderer coincident with the burning of the flag in derision and contempt. That is already enacted into law. I am talking about such things as the case in Boston, Mass., where a young man sewed the American flag to the seat of his pants. He was arrested and prosecuted, but the U.S. Supreme Court struck down the Massachusetts legislation for being what you very accurately described here a few minutes ago as constitutionally vague. I would rather not risk waiting on putting the penalties in, even minor in nature, to achieve the amendments that we all believe should be adopted and all of us support here today, including the American Legion, and also for the creation of the flag commission.

Senator HRUSKA. That case to which you refer is entitled *Smith v. Sheriff Goguen*. It was decided on March 25 of this year.

Mr. O'CONNOR. Yes.

Senator HRUSKA. And it struck down the Massachusetts statute directed against misuse of the flag on the ground that the language of the statute is, "void for vagueness under the due process clause of the 14th amendment," and so on.

That is how we tread into difficult ground, very difficult ground. And if an attempt is made to put a criminal sanction on the flag code, I am afraid we are in for deep trouble. Who is to say? Who is to say that if the code provides that there shall be no globe or eagle on the top of the flagpole that flies an American flag, that that is desecration, or defiling, or showing disrespect for it, and if you do that, you are going to be punished? Now, I have one of the best flagpoles in Douglas County, Neb. It sits on a little mound in my yard, and there is a great big gold plated eagle up on top. I would very much dislike having to remove that.

Mr. O'CONNOR. Mr. Chairman, I could not agree with you more. But if you will forgive me for saying so, there is one hell of a difference between what you have just cited as your love, respect, and honor for our national colors and the character up in Massachusetts who wore the flag on the seat of his pants.

Senator HRUSKA. There sure is.

Mr. O'CONNOR. The problem is what kind of language would be acceptable to the U.S. Supreme Court that is not constitutionally vague and would permit a penalty against what I would consider in that case an offender, in contrast to the situation you have described, where you have given honor, love, and affection to our national colors.

Senator HRUSKA. Well, that is right. There is a difference. But you see, it depends on the language used. You and I might not think of the Supreme Court decision and its results, but that is the law under which we are going to function. That is your oath, and that is my oath. And when they say that he did not treat contemptuously, when they say in their opinion that by challenging in State courts the vagueness of the "treats contemptuously" phrase as applied to him, the appellant preserved his due process claim \* \* \* for habeas corpus jurisdiction.

So the question was: Was the description of the conduct that was prohibitive sufficiently definite for this young man to have known? They decided not. That was the question.

Mr. O'CONNOR. I know they did, Mr. Chairman, but I would like the Supreme Court—and I am sure all of us would—to tell us what the motive of that young man was at the time he affixed the national colors to the seat of his pants. In my judgment, they would have to say that it was done to hold our national colors up to contempt, and that was the purpose of the Massachusetts legislation.

Senator Hruska. That is right. Then we get down to the criminal sanction, however. If you attach a criminal sanction to a flag code like we have now, then you are going to have to go to the Supreme Court if there is a prosecution under that and say there was a violation of the code. The man did not wear the button showing a flag on his lapel; he had cuff links made out of it, or he put it on his necktie, or he put it on his shirt. The lapel of a coat is not a shirt. And you are going to say, we are going to fine him \$5, \$25, \$100. What do you think the court will say about the right of self-expression?

Mr. O'CONNOR. I absolutely agree with the position you have stated. What you have spelled out is the grave difficulty in drawing the line. But the very fact that you concede that there is a line would indicate that there are situations which should be punished, and that is our position. I am saying that under these circumstances, that would require more study and more research, and as it stands now, we support the revisions in the flag code and the creation of the Flag Commission. This other area, I would think we would have to leave for intense study, and with counsel to the committee and our own resources, we would do all we could together to someday arrive at what we hope would be constitutionally clear and not vague. At this point, however, we ask for support for the resolution on the basis of flag code revision and the creation of a flag commission.

Senator Hruska. That is fine. I am sure there is no difference in our objectives. I am sure of that. The question is how to arrive at them when you start putting words on paper.

Mr. Counsel?

Mr. COLLINS. In a statement speaking about the flag commission, The American Legion favored a permanent commission as contrasted with Senator Toxer's approach of a temporary commission making a report in just 1 year. Could you give us your thoughts on that?

Mr. O'CONNOR. I think we would want a permanent commission because after they made a report in 1 year, then what would you do 5, 10, or 15 years from now? It is true we went without a flag code for 150 years. Then when we established one, as you well know—for the past quarter of a century—all these problems have arisen, and that is the reason we are asking for a flag code revision. So if you put the commission in existence for one year and it goes out because it has adopted a flag code, then what would you do? You would have to originate another temporary commission 10 or 15 years from now. As I understand, this is not going to be a paid commis-

sion. It would be those who serve on a voluntary basis, except, if I am correct, there would be reimbursement for expenses for travel and ordinary incidental expense.

Mr. COLLINS. But you would prefer a permanent commission?

Mr. O'CONNOR. Yes.

Mr. COLLINS. And you take the approach that the commission should be appointed by the President?

Mr. O'CONNOR. No, I do not. I say that while The American Legion suggested that in its resolution, we are in favor of the creation of a national flag commission, whether it be by the President or by the Congress.

I also testified that we asked the executive branch of the Government over 5 years ago to proceed with these revisions, which could have been done by Presidential proclamation, since they contain no criminal sanctions.

The point that the Senator made was that if you had criminal sanctions, you are in a dangerous area. You sure are. If you have criminal sanctions, the President cannot repeal them, either. I am certain the President, if he wanted to modify, could modify them, but he certainly could not repeal the criminal sanction enacted by the Congress. So I want to make it unequivocally clear that the American Legion will support very strongly a commission formulated by the Congress of the United States.

Mr. COLLINS. Are you saying, then, that The American Legion would also support the approach taken by Senator Tower for the creation of a commission?

Mr. O'CONNOR. Yes. We would support whichever the Judiciary Subcommittee in its best interests felt was best for the United States. We want the flag commission created, and we would like to see it created through legislation, whether it be Senator Tower's temporary commission or a permanent commission. What we are trying to do is to move on this legislation. Our preference is to have the flag commission in existence to consider in the days to come any changes.

Mr. COLLINS. As part of an attachment to your statement, you delineate all of the proposed revisions made by the approach taken in S.J. Res. 91.

Mr. O'CONNOR. Yes.

Mr. COLLINS. I think Mr. Finger in his statement pretty much covered those salient points. Do you have any you want to highlight yourself, or has Mr. Finger covered them in his statement?

Mr. O'CONNOR. Of course, Mr. Collins, these are our own composition. In fact, the language in this resolution is identical to what The American Legion passed. So unless you wish to question me concerning any specific section, we are willing to let our own written recommendations stand.

Mr. COLLINS. Mr. Finger basically covered all these points.

Mr. O'CONNOR. Yes, he did. There is one point that Mr. Finger made in answer to the Senator's question concerning mayors: The whole idea behind limiting flag lowering privileges to the President of the United States. We certainly do not think that privilege should go down below the Governor of the State. In the case that they referred to of a former mayor of New York City lowering the flag, that was in direct contradiction to the position of the Congress



Senator HRUSKA. There are some who believe it would be difficult to do that because of other provisions of the Constitution. You were in the room. I believe, when I used some of the examples where the code said you should wear the flag pin on your left lapel and you could not put an eagle above the flag, and that is not either defiling, mutilating, or desecrating the flag. It would be most difficult to say that if it is on the tie, it is all right, and if it is on a shirt pocket, it is not all right, but on a coat lapel, it is all right. Now, I would think that you could not point to any proof that to put the flag pin on a tie would defile, mutilate, or desecrate it, and you get into the business of freedom of expression, and so on. Those are some of the considerations that we get into when people say, well, let us enforce the code. It is most difficult. It is another thing when we get into section 700 of title 18 of the United States Code that says—the text of which will appear in the record—"Desecration of the Flag of the United States and Penalties." There are many, many cases under that. The first paragraph, for instance, (A) says whoever knowingly casts contempt upon the flag of the United States by publicly mutilating, defacing, defiling, burning, or trampling upon it shall be fined not more than \$1,000 or imprisoned for not more than 1 year or both.

Then there is a host of notes, three printed pages of very fine print, that contain the summaries of some of the cases decided under that title. Those are some of the things that this subcommittee and the judiciary committee will have to get into in drawing any bill or any code that would get into that field.

Mr. STOVER. I believe that the VFW would support putting teeth in the flag code if it is possible. We certainly prefer some sanctions in the code if it can be done within the framework of our Constitution and the experience that we have developed.

Senator HRUSKA. At the same time, the code serves a purpose, does it not? It takes out the confusion, misunderstanding, and indefiniteness. People are looking for information. They are not looking for commands; they are not looking for orders or decrees. They want information on what is respect or what is the proper way to act.

Mr. STOVER. I think this ought to be done by our 200th anniversary, as indicated by our previous witnesses. If you can do it, the code certainly should be updated, if possible, in time for the Bicentennial.

Senator HRUSKA. Thank you.

Do you have anything to add to that?

Mr. HOLT. As said by Mr. Stover earlier, I think the American people are really crying out loud for some guidance as to the proper manner, when and how to display our flag. All of us remember Mayor Lindsay issuing an order to fly the flag at half-staff for a citizen of New York. We think that is going a little too hard.

As the lady said about the condominium owners, I know of two posts in the VFW, for instance, large posts, over 2,000 members each, when one of their members dies, they fly their flag at half-staff. Their flag is at half-staff almost all the time.



These things should not be permitted, I believe. I believe the majority of the VFW would like a commission to get into the proposition of who really would decide when a flag should be flown at half-staff. I have a feeling it should be left to the Commander in Chief of our Armed Services. I believe the great majority of the people would abide by a commission recommendation here, and I hope they do look into it.

Senator HRUSKA. Thank you both very much for appearing.  
[The above-referred-to documents follow:]

VETERANS OF FOREIGN WARS OF THE UNITED STATES.  
Kansas City, Mo., July 21, 1972.

Mr. MEL STEPHENS  
The White House,  
Washington, D.C.

DEAR MEL: The object of rewriting the Federal Flag Code was to up-date it; to line up the provisions of the Code in a more readable, better flowing sequence; to use layman's language and to make full mention of the Presidential Proclamations and Public Laws which the Federal Flag Code has heretofore failed to bring fully to the attention of the Public.

This, I trust, has been done in the attached re-write.

The portions of the present Federal Flag Code which I did not change will be in black print.

Every word, sentence, paragraph or section that I changed will be in red print.

As the re-write considerably enlarged the Code, I had to change the numerical and alphabetical sequences used in the present Federal Flag Code.

As the present Code stands, you will note (from the attached copy) that the Sections are numerical while the Subsections are alphabetical.

I've revised that procedure because there are only 26 letters in the alphabet and I had to list over 26 Subsections, therefore my Sections are alphabetical and my Subsections are numerical—which, quite frankly is even clearer, I believe. Also, more Subsections can be added anytime with numerical designations, whereas that old limit of 26 alphabetical characters would always be a block.

On the first page of the re-write, note that I have inserted some new data concerning the state flag codes.

I have also inserted the text of Public Law 90-381 so the public will, for once, be aware of its existence and of its stringent provisions against misuse of the flag.

I am also extremely interested in bringing to their attention the definition of the word "flag."

Note also, that I have inserted clarifying data directly after Public Law 90-381 which serves to explain National Ensign, National Color and National Standard, which is something that neither Public Law 90-381 nor the Flag Code does. Because of this oversight many people are presently confused about such terms.

I am going down the list now and cover all changes I have made by section and subsection:

SECTION A (2)

Many of the dates in this section should have been changed years ago. The advent of the now, so-called "Monday Holiday Bill" outdated the section, but even prior to that new piece of legislation there were faults. You will note that in the present Federal Flag Code this section lists both Army Day and Navy Day as special occasions upon which we should fly the flag.

There are no such days and haven't been since Armed Forces Day was initiated many years ago. So you can readily see that even now this present Code is still encouraging millions of people to display the flag on all the wrong dates.

SECTION A (6)

This change is in full accordance with the Library of Congress Legislative Reference Service pamphlet "The Federal Flag Code Including Selected Questions and Answers" (see page 9 of the pamphlet.)

## SECTION A (17)

Same source as above. (see page 10).

## SECTION A (18)

Same source as above. (see page 12.)

## SECTION A (19)

This is one provision which I am seeking to have incorporated into the new Federal Flag Code.

My understanding is that such a rule does apply to our neighboring country, Canada, and I certainly believe it is fully logical that it should apply in our country.

## SECTION A (19)

The United States Flag should occupy the *place of honor* in this country and that is to the *right* of other flags (see page 17 of the Library of Congress pamphlet).

## SECTION A (22)

Too many persons are placing peace symbols, doves, ecological data, political slogans, etc., in the place of the stars in the blue field of our flag. There is an approved design of 50 stars for that blue field and no other items should appear there. The Federal Flag Code *must* make this *extra clear* if desecration of our flag is to be discouraged.

When our forefathers designed our flag they provided for a field of blue containing stars and nothing else. Let's *stick* to their plan.

## SECTION A (24)

I have added one sentence to this provision (which is already part of the present Code).

People are not supposed to carry the flag in a horizontal position and should never toss coins or anything else on it. Far too many parades still use the flag as a receptacle for gathering funds. This practice should cease.

Flag authorities have frowned on this sad practice for years.

## SECTION A (27)

Far-out individuals or groups constantly show their hostility by turning our flag upside down to show how *perturbed* they are.

This type of reaction has nothing in common with the original intent of this provision of the Flag Code which envisioned the upside down flag as an actual case of dire emergency.

Let's close this obvious loophole to demonstrators and make the Flag Code worthwhile.

## SECTION A (29)

This provision is *not* part of our present Flag Code, but it should be. It would certainly prohibit the carrying of Viet Cong flags in parades in this nation. Such flags are an insult to the parents and relatives of men who have served heroically in Viet Nam or who have given up their lives in the name of patriotism.

We are all well aware that no one would have carried a Japanese or German flag in any parade in this country during World War II.

I think that was a much healthier attitude than that which now prevails and allows such flagrant anti-American displays.

## SECTION A (40)

Flag authorities have long stated that it is all right to fly an outdated United States flag, provided it is in good condition.

Therefore, it is about time that we did incorporate this fact in the new Federal Flag Code, so people will stop destroying perfectly good flags and use them until they become unfit to display.

## SECTION A (41)

Antenna flags are obviously with us to stay. Therefore we need to cover their use in the Flag Code. The present one doesn't even acknowledge their existence. Thus, the average citizen doesn't know what to do concerning their use.

## SECTION A (42)

Flag patches have never been covered by the Flag Code either. So let's do so in the new Flag Code.

## SECTION A (43)

The same type of thinking applies to flag pins and buttons. Let's cover their usage in the Flag Code and eliminate guessing games.

## SECTION A (44)

No mention of flag-staff ornaments has been included in the Code before. It's time we enlightened the people, so they can do what is right.

## SECTION A (45)

If a person flies a large flag on a short flagpole or a small flag on a large flagpole it looks ludicrous. Therefore, we need to give them a guideline to follow so flag displays will look proper. The Flag Code should have covered this a long time ago.

## SECTION A (46)

I receive numerous letters and calls each year asking me why the flag is folded in a triangular shape. It's time we let the whole country know why they are doing so.

I have even put out a special single page item, in color to cover this aspect.

## SECTION B (1)

The majority of our people will always say the flag is at "half-mast" when, actually, in most cases it is really "half-staffed". It is time we fully clarified the two terms.

## SECTION B (2)

The present Flag Code has never informed people on the proper procedure for half-staffing the flag. A good Code should do so.

## SECTION B (3)

This provision will also end great confusion about the term "peak" and should definitely be included in the Flag Code.

## SECTION B (4)

Once more, we can further clarify half-staffing procedures with this provision.

## SECTION B (5)

This fact was only briefly covered in Section 2(d) of the present Flag Code. We need to *expand* on the matter.

## SECTION B (6)

People feel that the flag is supposed to be half-staffed on Veterans Day just as on Memorial Day, but that is completely wrong. Veterans Day is a celebration whereas Memorial Day is one of mourning.

## SECTION B (7)

This fact is not covered in the present Flag Code and it definitely should be.

## SECTION B (8)

I doubt if 1 out of every 10,000 people are aware that Proclamations 3044 and 3948 even exist. Therefore, they can hardly be expected to comply with them, so let's bring them to the attention of the public for once.

There is another point also. Proclamations 3044 and 3948 cover certain Federal Officials, but leave the populace completely up in the air regarding other people of note.

For example, when J. Edgar Hoover died, neither Proclamation applied to his case. My advice to people who called from all parts of the country, for instructions on half-staffing the flag, was to half-staff it from the time of his death until the date of his interment.

I believe this rule should be incorporated into the Flag Code for persons not covered by the Proclamations.

## SECTION B (9)

I have received many calls regarding this aspect of half-staffing the flag when the state, city or other flag is displayed on the same flagpole, as is often done.

Obviously, such flags must also be lowered when the United States flag is to be half-staffed, because the United States flag must occupy a place of prominence above other flags of this type.

Let's incorporate such a provision in the new Code to enlighten many confused people across America.

## SECTION C (4)

This has been altered from Section 4 of the present Flag Code and another paragraph has been added to *qualify* the provision, because of the data concerning the Navy.

## SECTION C (5)

I have separated this aspect from Section 5 of the present Flag Code, because it actually requires *clarification* as to the proper saluting.

The whole last paragraph is new, in fact. It covers good, common sense, and has been advocated by flag authorities for a long time.

People certainly do tire of saluting the hundreds or thousands of United States flags in a parade.

Saluting the lead flag in each separate unit of the parade should suffice to adequately show that one is a patriot and loyal to his country.

## SECTION C (7)

This provision has been added to clarify a point of confusion among many Americans who just aren't sure what to do.

## SECTION D

This entire section is new and its inclusion in the Flag Code would certainly benefit countless citizens, especially those belonging to organizations, who aren't positive about *proper* procedures.

## SECTION E (1)

I do receive countless questions on this point. Far too many rumors circulate concerning such flags.

People are afraid they will be considered sacrilegious if they do fly a flag formerly used on a casket, but nothing is farther from the truth.

Let's tell the people it is okay to fly such flags in the new Flag Code.

## SECTION E (3)

There is confusion about the display of the flag on a casket. Let's eliminate it by incorporating this new provision. It is a *custom* which has endured for decades and is still followed, so let's give the public the facts.



## SECTION E (4)

Flags come in so many sizes that the public becomes totally confused. Let's make it easy for them with this new provision.

## SECTION E (5)

No object should be placed on the flag, of course, and we must make it clear that this applies to flags used at funerals, as well. This new provision will fill a definite need.

## SECTION E (6)

Flags placed in Arlington National Cemetery are, removed the next day. Let's encourage the nation to follow this example, so everyone will be in accord.

Too, flags which persons leave longer will not be cared for and will become tattered and soiled and will therefore, have violated provisions of the Federal Flag Code.

## SECTION F (1)

This is an enlargement upon the present Section 4(j) of the Flag Code. It offers better guidance than the present paragraph.

That about sums it up for now. If you have any questions or suggestions, let me know.

Yours truly,

RAYMOND B. EDWARDS,  
Director, Americanism—Loyalty.

Enclosures.

The following document is known as the Federal Flag Code. It prescribes proper display of and respect for the United States Flag.

This code does not impose penalties for misuse of the United States Flag. That is left to the states and to the federal government for the District of Columbia. Each state has its own flag code.

These state codes vary considerably in defining what acts do actually constitute desecration of the flag and the term of imprisonment and the amount of fines imposed run a wide range.

The Federal Flag Code does not supersede these state laws. However, there are Public Laws which do concern misuse of the flag. They are:

(Public Law 90-381: 82 Stat. 191). The text of the law, which makes desecration of the flag a Federal offense punishable by fines of not more than \$1,000.00 or up to one year imprisonment, or both, follows:

## TITLE 18 UNITED STATES CODE

700. Desecration of the flag of the United States: penalties: (a) Whoever knowingly casts contempt upon any flag of the United States by publicly mutilating, defacing, defiling, burning, or tramping upon it shall be fined not more than \$1,000 or imprisoned for not more than one year, or both.

(b) The term "flag of the United States" as used in this section, shall include any flag, standard, colors, ensign, or any picture or representation of either, or of any part or parts of either, made of any substance or represented on any substance, of any size evidently purporting to be either of said flag, standard, colors, or ensign of the United States of America, or a picture or a representation of either, upon which shall be shown the colors, the stars and the stripes, in any number of either thereof, or of any part or parts of either, by which the average person seeing the same without deliberation may believe the same to represent the flag, standards, colors, or ensign of the United States of America.

(c) Nothing in this section shall be construed as indicating an intent on the part of Congress to deprive any State, territory, possession, or the Commonwealth of Puerto Rico of jurisdiction over any offense over which it would have jurisdiction in the absence of this section.

To clarify the above law, the following definitions are listed:

Our National Flag is sometimes referred to as the "National Ensign."

"National Color" or "National Standard."

The "National Ensign" is a term used by the U.S. Navy and indicates the National Flag flown by ships, boats and airships.

The "National Color" refers to U.S. flags carried by those on foot.

The "National Standard" is carried by persons who are mounted or by mechanized and motorized units.

(Public Law 107, enacted July, 1953) No person shall display the flag of the United Nations or any other national or international flag equal, above, or in a position of superior prominence or honor to, or in place of, the flag of the United States at any place within the United States or any Territory or possession thereof; Provided, That nothing in this section shall make unlawful the continuance of the practice heretofore followed of displaying the flag of the United Nations in a position of superior prominence or honor, and other national flags in positions of equal prominence or honor, with that of the flag of the United States at the headquarters of the United Nations or at any place at which any official meeting or proceeding of the United Nations is in progress. Whoever knowingly violates the provisions of this section shall be fined not more than \$250 or imprisoned not more than six months, or both.

#### SEC. A. DISPLAY OF THE FLAG

- (1) The flag should always be hoisted briskly and lowered ceremoniously.
- (2) The flag may be displayed on any day of the year but citizens are particularly urged to fly them on the following holidays and special occasions: New Years Day, January 1; Presidential Inauguration Day, January 20; Lincoln's Birthday, February 12; Washington's Birthday, 3rd Monday in February; Easter Sunday; Loyalty Day, May 1; Mother's Day, 2nd Sunday in May; Armed Forces Day, 3rd Saturday in May; Memorial Day (half-staff until noon, then full-staff to sunset) the last Monday in May; Flag Day, June 14; Father's Day, third Sunday in June; Independence Day, July 4; Labor Day, first Monday in September; Constitution Day, September 17; Columbus Day, 2nd Monday in October; Veterans Day, 4th Monday in October; Thanksgiving Day, 4th Thursday in November; Bill of Rights Day, December 15; Christmas Day, December 25; also for state and local holidays and Statehood Days for commemoration of admission to the Union; also upon all election days and other such occasions as may be proclaimed by the President of the United States.
- (3) The flag should be displayed daily, on or near the main administration building of every public institution.
- (4) The flag should be displayed in or near every polling place on election days.
- (5) The flag should be displayed during school days in or near every school-house.
- (6) The flag may be flown 24 hours per day, if so desired. Proper periodic inspections must be undertaken, however, to insure that the flag is never flown in a tattered or soiled condition.
- (7) The flag may be flown at night. In such instances the flag should be illuminated so it will be visible.
- (8) The flag may be flown in inclement weather, provided it is made of waterproof material.
- (9) No flag of any other nation will be carried in a parade or procession in this country unless the United States flag is also present.
- (10) When two or more flags are staffed before the entrance of a building, the United States flag must be on the left, as observed from the street.
- (11) When carried in a procession with another flag or flags, the United States flag must be either on the marching right; that is, the flag's own right, or, if there is a line of other flags, in front of the center of that line.
- (12) When flags of two or more nations are displayed, they are to be flown from separate staffs of the same height. The flags must be of approximately equal size. International usage forbids the display of the flag of one nation above that of another nation in time of peace.
- (13) When flags of states, cities, or localities, or pennants of societies are flown on the same halyard with the flag of the United States, the latter must always be at the peak. When the flags are flown from adjacent staffs, the flag of the United States must be hoisted first and lowered last. No such flag or pennant may be placed above the flag of the United States or to the right of the flag of the United States.
- (14) No other flag or pennant should be placed above or, if on the same level, to the right of the flag of the United States of America, except during church services conducted by naval chaplains at sea when the church pennant

may be flown above the flag during church services for the personnel of the Navy. (See Public Law 107.)

(15) When the flag of the United States is displayed from a staff projecting horizontally or at an angle from the window sill, balcony, or front of a building, the union of the flag must be placed at the peak of the staff unless the flag is at half staff. When the flag is suspended over a sidewalk from a rope extending from a house to a pole at the edge of the sidewalk, the flag must be hoisted out, union first, from the building.

(16) When the flag is displayed over the middle of the street, it must be suspended vertically with the union to the north in an east and west street or to the east in a north and south street.

(17) The flag must not be draped over the hood, top, sides, or back of a vehicle or of a railroad train or a boat.

(18) The flag must never be carried flat or horizontally, but always aloft and free.

(19) The flag must not be displayed on a float in a parade except from a staff, or as provided in subsection 20.

(20) When the flag is displayed otherwise than by being flown from a staff, it must be displayed flat, whether indoors or out, or so suspended that its folds fall as free as though the flag were staffed.

(21) The flag must never have placed upon it, nor on any part of it, nor attached to it any mark, insignia, letter, word, figure, design, picture, symbol, slogan or drawing of any nature.

(22) The blue field (union) of the flag must contain only the correct number of stars representing the states in the union. The stars will be properly arranged in a design which has been officially approved by the Federal government.

(23) The flag must never be used for advertising purposes in any manner whatsoever. It must not be embroidered on such articles as cushions or handkerchiefs and the like, printed or otherwise impressed on paper napkins or boxes or anything that is designed for temporary use and discard; or used as any portion of a costume or athletic uniform. Advertising signs must not be fastened to a staff or halyard from which the flag is flown.

(24) The flag must never be used as a receptacle for receiving, holding, carrying or delivering anything. During parades, it will not be utilized as a means of gathering coins tossed by a crowd, even for charitable purposes.

(25) The flag must never be used as drapery of any sort whatsoever, never festooned, drawn back, nor up, in folds, but always allowed to fall free. Bunting of blue, white and red, always arranged with the blue above, the white in the middle, and the red below, must be used for covering a speaker's desk, draping the front of a platform, and for decoration in general. When bunting is displayed vertically, the blue will be to the observer's left, white in the center and red on the right.

(26) The flag must never touch anything beneath it, such as the ground, the floor, water, or merchandise.

(27) The flag must never be displayed with the union down save as a signal of dire distress. Personal feelings or group reactions over domestic or foreign affairs do not constitute dire distress under this Code.

(28) The flag must never be fastened, displayed, used, or stored in such a manner as will permit it to be easily torn, soiled, or damaged in any way.

(29) It is illegal to carry the flag of any nation, engaged in warfare against the United States, during any parade, procession or ceremony at any time, in this country.

(30) When used on a speaker's platform, the flag, if displayed flat, must be displayed above and behind the speaker.

(31) The U.S. Flag must be staffed to the right of the speaker if he is on a platform (raised surface above the level of the audience); otherwise the U.S. Flag is staffed to the right (front) of the audience.

(32) The flag must never be used as a desk or table covering, nor have any object placed upon it.

(33) When the flag is hung flat against a wall, whether hung horizontally or vertically, the flag's blue field is to the flag's own right, or to the observer's left as he faces the flag.

(34) When the flag is displayed above an honor roll it should be hung flat or suspended so its folds fall free. The flag should not be draped, festooned nor allowed to touch the honor roll.

(35) When displayed in a school classroom the flag must be hung flat against the wall behind the teacher's station or, if staffed and on the same level with students, the flag must be to the student's right as they face the front of the room.

(36) The flag of the United States of America, when it is displayed with another flag against a wall from crossed staffs, must be on the right, the flag's own right, and its staff must be in front of the staff of the other flag.

(37) The flag of the United States of America must be at the center and at the highest point of the group when a number of flags of States or localities or emblems of societies are grouped and displayed from staffs.

(38) The flag must not be used as a covering for a ceiling.

(39) The flag can form a distinctive feature of the ceremony of unveiling a statue or monument, but it must never be used as the covering for the statue or monument.

(40) Though it is always preferable to fly an up-to-date flag, it is not illegal to fly an older version of the flag, having less stars, provided the flag is still in good condition.

(41) Antenna flags may be properly displayed on motor vehicles. However, such flags must be treated with the same care and respect shown to full-size United States flags. Soiled or torn flags of this nature should be cleaned or destroyed if beyond repair.

(42) United States flag patches may be worn, but not in any position on the clothing which would indicate contempt for the flag, or the country it represents, such as on the knees or the seat of one's pants.

(43) Flag buttons or flag pins may be worn, if they properly depict the United States flag as approved by the Federal government.

(44) The use of ornaments on flag-staffs should be limited to the spear, ball, eagle, acorn or lance. The eagle and globe combination should not be used on flag-staffs by civilians and civilian organizations as it is generally reserved for the Presidential flag and colors.

(45) To determine the size of a flag be in relation to the flagpole figure 25 percent of the height of the pole from the ground as the correct length for the flag.

Conversely, the flagpole from ground-level to the top of the staff should be at least 3 or 4 times the length of the flag.

(46) When our flag is lowered and folded it will be folded into a triangular shape to symbolize hats which were worn by soldiers of the American Revolution.

#### SEC. B. HALF-STAFFING THE FLAG

(1) On land, the flag is flown on a staff while on sea it is flown on a mast. Therefore we say the flag is half-staffed on land and it is at half-mast aboard ship.

(2) When placing the flag at half-staff, it should be hoisted to the peak for an instant and then lowered to the half-staff position. Before the flag is lowered for the day it should be raised briefly to the peak.

(3) The peak is the highest point to which the flag can be raised. The top of a ball, or the end of a spike topping a flagstaff is therefore *not* the peak of the staff.

(4) The correct position of the flag at half-staff is not necessarily half way down the staff. It should be at a suitable height down from the top, depending on the size of the flag and the height of the pole, to indicate that it is half-staffed.

(5) On Memorial Day, even without a Presidential Proclamation, the flag is displayed at half-staff from sunrise until noon and at full-staff from noon until sunset. The President can specifically proclaim that it be half-staffed from sunrise to sunset, however.

(6) The flag is not half-staffed on Veterans Day, because this occasion, originally known as Armistice Day, was a day of celebration, not of mourning.

(7) It is proper to salute and to Pledge Allegiance to the half-staffed flag.

(8) Presidential Proclamation No. 3044 issued March 1, 1954 and amending Proclamation 3948 issued December 12, 1969 prescribe certain rules for the duration of display of the United States flag, at half-staff by Federal Authorities on Federal buildings, grounds, etc., upon the death of a President and certain designated other Federal Officials. These Proclamations have been supplemented by Orders issued by Presidents at the deaths of other leading citizens.



not covered by the proclamations, as a mark of Official tribute to their service to the country.

When the duration of display of the flag at half-staff is not specified in Proclamation 3044 or in 3948, the flag will be half staffed from the time of death until the time of interment.

Only the President of the United States, either directly through proclamation or executive order, or indirectly through automatic operation of Proclamation 3044 or 3948, has the authority to order the flag to be flown at half-staff on Federal Government buildings, grounds and facilities and naval vessels.

These Proclamations and Orders do not apply as a matter of law, to the display of the flag at half-staff by private individuals, State Officials, or organizations, but is frequently used as a guide by them.

The decision as to flying the flag at half-staff on any other buildings (other than Federal buildings) rests with the person who owns or is responsible for the property on which the flag is displayed.

(9) When another flag or pennant is flown on the same flagpole with the flag of the United States and the U.S. Flag is half-staffed, the other flag must also be lowered to a position beneath the U.S. flag.

#### SEC. C. SALUTING

(1) When saluting the flag, persons in uniform will render the military salute (fingertips of the right hand to this cap). Men in civilian dress will place the right hand over the heart (holding hat, if one is worn, at the left shoulder). Women in civilian dress will salute by placing the right hand over the heart. These rules also apply to children.

(2) When the flag is displayed during the playing of the National Anthem, all persons present should stand and face the flag. Those in uniform will render the military salute—retaining that position until the last note is played.

Women and uncovered men face their right hands over their hearts. Men with hats will remove them and hold them at their left shoulder—their right hands being over their hearts.

The same rules apply to children.

(3) When the National Anthem is played and the flag is not displayed, all persons present will stand and face the music. Those in uniform will render the military salute. They will salute at the sound of the first note and hold the salute until the last note is played.

All others should stand at attention, men removing their hats.

(4) "Do not dip the Flag of the United States to any person or thing. Regimental colors, state, organization or institutional flags will render that honor."

However, a U.S. Nat. ship, upon receiving a salute by the dipping of the flag from a vessel registered by a nation which is formally recognized by the U.S. must return the compliment dip for dip.

(5) When the flag passes by in a parade, the same rules apply as when the flag is being hoisted or lowered. All persons should stand and salute.

Uniformed persons will render the military salute—holding it until the flag has passed their position. Women and uncovered men will place their right hands over their hearts. Men wearing hats should remove them and hold them at the left shoulder—the right hand being over the heart.

Technically, a person should rise and salute each of the many United States Flags carried in a parade, but it is acceptable to salute the lead flag in each unit of the parade and stand at attention as the other U.S. Flags within a unit pass by.

(6) The following is designated as the Pledge of Allegiance to the flag: "I pledge allegiance to the flag of the United States of America and to the Republic for which it stands, one Nation under God, indivisible, with liberty and justice for all."

Such pledge should be rendered by standing with the right hand over the heart. However, civilians will always show full respect to the flag when the pledge is given by merely standing at attention, men removing the headdress. Persons in uniform shall render the military salute.

(7) It is proper for one to voice the Pledge of Allegiance while at the right hand salute.

#### SEC. D. CARRYING THE FLAG

(1) When carrying a staffed flag it is proper to hold the staff with one or both hands in front of the center of the body, the base of the staff resting

against the body and the staff sloping upward, and forward at an angle of about 30 degrees from the body.

(2) The flag bearer should only hold the flag against the staff when lowering the staff through a doorway. Otherwise, the flag should hang free.

(3) When the flag is being carried into room and placed in its stand, everyone should stand, facing the platform. The color bearer, followed by escort, marches to the front and faces the audience. Escort takes position on either side of the flag bearer. With proper salute the audience pledges Allegiance to the flag. The National Anthem may be sung. The flag bearer then places flag in its stand. As bearer and escort start to leave, the audience is seated.

(4) When the flag is carried at the side of the body, the staff is held vertically in the right hand, gripped between thumb and forefinger, back of hand to the right, arm extended downward, the staff resting against the outer side of the shoulder, base of staff about midway between the hip and knee.

(5) No religious, organizational or sectional emblem will precede the United States flag in a procession.

(6) The United States flag will not be carried back over the shoulder of a bearer.

#### SEC. E. THE FLAG AND THE DEAD

(1) The U.S. flag may be displayed or flown after it has been used as a casket cover. The U.S. Flag belongs to all the people. Placing the flag upon the casket of one who defended it is a gesture of gratitude by the people in honor of the deceased. After the flag has been used to honor the dead it should be displayed or flown as the emblem of all Americans.

(2) When the flag is used to cover a casket, it should be so placed that the union is at the head and over the left shoulder. The flag should not be lowered into the grave or allowed to touch the ground.

(3) The flag is reversed on the casket, with the blue field (union) to the observer's right, instead of the left, to indicate mourning.

(4) The regulation size of the flag upon the casket of a deceased veteran is seven feet long by 4½ feet wide, with hemmed heading. Such a flag will be made available, without cost, by either the local postmaster or Veterans Administration facility.

(5) It is not proper to place a pall, wreath, flowers, lodge emblem or other object on the flag of the United States covering the casket.

(6) Flags on staffs, which are placed on graves on specific occasions should be removed the following day, i.e., Memorial Day.

#### SEC. F. CONCLUSION

(1) Never destroy a U.S. Flag in public ceremony. When the Flag is so badly torn, soiled or faded that it is no longer a fitting emblem for display the Flag should be destroyed in private, preferably by burning and without ceremony. A torn Flag may be mended, or if soiled it may be washed or dry cleaned. Hang it for drying in a manner as not to suggest carelessness or disrespect.

(2) Any rule or custom pertaining to the display of the flag of the United States of America, set forth herein, may be altered, modified, or repealed, or additional rules with respect thereto may be prescribed, by the Commander-in-Chief of the Army and Navy of the United States, whenever he deems it to be appropriate or desirable; and any such alteration or additional rule shall be set forth in a proclamation.

[The following resolutions were adopted at the 74th national convention of the Veterans of Foreign Wars of The United States held in New Orleans, La., August 17 through 24, 1973.]

#### RESOLUTION No. 110.—RESPECT FOR OUR FLAG

Whereas there is an alarming tendency for our citizens to fail to show proper respect for the Flag of the United States during parades and other patriotic observances; and

Whereas many homes and commercial establishments fail to display the Flag on Memorial Day, Fourth of July, Veterans Day and other patriotic days; now: Therefore be it

*Resolved by the 74th National Convention of the Veterans of Foreign Wars of the United States, That we call upon all citizens to render proper respect to the Flag of the United States on all occasions, and that by precept and example*

V.F.W. members and the Ladies Auxiliary lead the way by displaying at our homes the Flag of the United States on all patriotic days, and that we pay proper tribute to the Flag at all times.

**RESOLUTION No. 113.—RESPECT FOR NATIONAL ANTHEM AT PUBLIC GATHERINGS**

Whereas since the adoption of the Star Spangled Banner as our national anthem, it has become traditional to sing, and, or play it at the opening of all sporting events and other large public affairs; and

Whereas in recent years there have been many instances of disrespect shown our flag and national anthem by a small minority of our citizens. Because of this some high officials in the sporting world have proposed that the practice of playing the national anthem at the beginning of major sports events be discontinued, except on very special occasions; and

Whereas, we believe that the vast majority of our citizens not only favor the playing of our national anthem at these events but also are proud to demonstrate their love and respect of country by standing at attention, uncovered until the last notes of the Star Spangled Banner have died away: Now, therefore, be it

*Resolved by the 74th National Convention of the Veterans of Foreign Wars of the United States.* That we vigorously oppose this abject surrender of our national traditions to this small disrespectful minority of our citizens; and be it further

*Resolved.* That a respectful rendition of our national anthem be presented at our nation's sporting events and other large public gatherings to foster an atmosphere of patriotism and provide a source of inspiration to all loyal citizens in attendance.

**RESOLUTION No. 116.—FLY THE FLAG OF THE UNITED STATES DAY AND NIGHT AT VA HOSPITALS**

Whereas, it is only appropriate that all Americans demonstrate their respect, appreciation and concern for our veterans, who in the performance of their duties while serving their country, have and are suffering untold pain and agonies; and

Whereas, our respect, appreciation and concern can best be acknowledged and symbolized by the permanent display and lighting of the American Flag at all Veterans Hospitals throughout the Nation; and

Whereas, the spot lighting of Old Glory could serve to inspire and illuminate many dark and lonely hours experienced by our veterans. Perhaps as they look out into the darkness of the night and see Old Glory lit up as a special tribute to them, it could also serve as a perpetual reminder of our concern and love for them: Now, therefore be it

*Resolved by the 74th National Convention of the Veterans of Foreign Wars of the United States.* That the President of the United States and the National Director of the Veterans Administration be urged to consider and encourage the nocturnal display of the flag of our country at all Veterans Hospitals, illuminated with a guiding light of hope for Peace and Unity from dusk to dawn.

Mr. Charles E. Mattingly, deputy legislative director of The American Legion, will be our next witness. He will be accompanied by Mr. Charles E. Masters, assistant Americanism director.

Mr. O'Connor, are you also among this group?

Mr. O'Connor. Yes, I am.

Senator HIRSKA. That is fine.

You have filed with the subcommittee a copy of your statement. Suppose you read that statement and then we will include in the record following your statement the copies of the resolutions which are attached to your statement. We will print those in full.

TESTIMONY OF DANIEL J. O'CONNOR, CHAIRMAN, NATIONAL AMERICANISM COMMISSION, THE AMERICAN LEGION, ACCOMPANIED BY CHARLES E. MATTINGLY, DEPUTY LEGISLATIVE DIRECTOR, THE AMERICAN LEGION, AND CHARLES E. MASTERS, ASSISTANT AMERICANISM DIRECTOR, THE AMERICAN LEGION

Mr. O'CONNOR. The American Legion and the American Legion Auxiliary appreciate the opportunity of appearing before your subcommittee to express their views on the need for revision of our Federal flag code (Public Law 829), to offer suggested amendments, and to recommend the establishment of a national flag commission.

For the past 11 years, I have served as chairman of The American Legion's National Americanism Commission which has, as a part of its total program activities, the responsibility for The American Legion's patriotic programs, one of which is flag education. We conduct flag education programs in our schools through our 16,000 local Posts of The American Legion and provide various publications dealing with flag etiquette to the general public, as well as to the nearly 4 million members of The American Legion and American Legion Auxiliary. I have in my hand, Mr. Chairman, The American Legion publication on "Let Us Be Right on American Flag Etiquette." We would appreciate you making it a part of the record, Mr. Chairman.

Senator HIRSKA. We would like to have it for our record, or for our files. Pertinent parts of it will be printed in the record subject to the selection of our staff with your assistance.

Mr. O'CONNOR. Thank you.

[The above-referred-to publication may be found in the files of the Subcommittee on Federal Charters, Holidays and Celebrations.]

Mr. O'CONNOR. For several years we have been besieged with letters and telephone calls at our National Headquarters by individuals, churches, schools, private organizations, and businesses asking advice on matters relating to proper display and use of the flag. These inquiries have come about because of the vagueness of some sections of the flag code and misinterpretation on the part of the public.

The American Legion has conducted extensive research in an effort to obtain suitable information to modernize and make more concise the existing flag code, as well as to provide additions for situations not covered by present law.

The 1971 and 1972 National Conventions of The American Legion and American Legion Auxiliary have incorporated the results of this research into form of resolutions which were unanimously adopted. A copy of the most recent of these resolutions adopted at our National Convention in Chicago, Illinois, August 22-24, 1972, which proposes specific amendments to the flag code and urges the establishment of a national flag commission, is attached to my statement.



It is somewhat of a paradox as we approach the bicentennial celebration of the founding of our Nation that our citizens find themselves in a state of confusion regarding the use and display of the honored symbol of our Nation.

Another factor that has contributed substantially to the confusion of our citizens over proper display and usage of the flag is the fact that the various States have their own flag laws with varying provisions, some of which have been found to be unconstitutional. If our flag is truly to be a national flag, then regulations concerning its usage and penalties for its desecration should be established by our Federal Government. A modernized and concise Federal flag code should serve as a model for individual State laws, thus providing uniformity and minimizing controversy.

The membership of The American Legion, all of whom are war-time veterans, have come to know the real meaning of the symbol of our country and have expressed keen disappointment that the flag code has not been updated. We are at a point in the history of our country when we need to take every step possible to rekindle patriotism and reestablish a sense of national unity among our citizenry. We believe that updating the flag code, which in its present form has contributed to controversy and dilution of patriotism, can be helpful in achieving these goals. For these reasons, Mr. Chairman, The American Legion hopes that your subcommittee will favorably recommend S.J. Res. 91 to the full committee to permit the amendments called for therein to be approved and implemented at the earliest possible date. As you know, we must move forward with this project immediately if we are to have time to acquaint the public with an updated flag code prior to the bicentennial in 1976.

The establishment of a national flag commission also has the strong support of The American Legion. Such a commission would provide a permanent forum for the military, patriotic organizations and private citizens to present their views and recommendations for additional improvements in the flag code as the need for such is demonstrated in the future.

Mr. Chairman, speaking for The American Legion and the American Legion Auxiliary, I urge the subcommittee's favorable action of S.J. Res. 91. In view of the short time available prior to the bicentennial, I would urge this legislation be handled in the most expeditious manner.

Thank you for this opportunity to present The American Legion's views on this important subject.

[The above-referred-to attachments follow:]

#### THE AMERICAN LEGION

54th National Convention, held at Chicago, Illinois, August 22-24, 1972

Resolution No. 87

Committee: Americanism

Title: Revision of Public Law 829-77 (Flag Code)

Whereas, The United States Congress has approved Public Law 829, and amendments thereto, for the purpose of codification of existing rules and customs pertaining to display of the Flag of the United States of America; and

Whereas, The clarity of said Public Law 829 and its amendments is left to the multitude of interpretations which this resolution hopefully will correct; Now, therefore, be it

*Resolved by The American Legion in National Convention assembled in Chicago, Illinois, August 22, 23, 24, 1972, that Section 2(a) of Public Law 829, which reads as follows:*

"It is the universal custom to display the flag only from sunrise to sunset on buildings and on stationary flag-staffs in the open. However, the flag may be displayed at night upon special occasions when it is desired to produce a patriotic effect."

be amended to read as follows:

It is the universal custom to display the flag only from sunrise to sunset on buildings and on stationary flag-staffs in the open. However, the flag may be displayed 24 hours per day if properly illuminated during the hours of darkness when a patriotic effect is desired.

and, be it further

*Resolved, That Section 2(c) which reads as follows:*

"The flag should not be displayed on days when the weather is inclement,"

be amended to read as follows:

The flag should not be displayed on days when the weather is inclement, except when an all-weather flag is displayed

and, be it further

*Resolved, That Section 2(d) which reads as follows:*

"The flag should be displayed on all days when the weather permits especially on New Year's Day, January 1; Inauguration Day, January 20; Lincoln's Birthday, February 12; Washington's Birthday, the third Monday in February; Easter Sunday (variable); Mother's Day, second Sunday in May; Armed Services Day, third Saturday in May; Memorial Day (half-staff until noon), the last Monday in May; Flag Day, June 14; Independence Day, July 4; Labor Day, first Monday in September; Citizenship Day, September 17; Columbus Day, the second Monday in October; Veterans Day, the fourth Monday in October; Thanksgiving Day, fourth Thursday in November; Christmas Day, December 25; such other days as may be proclaimed by the President of the United States, the birthdays of States (dates of admission); and on State holidays."

be amended to read as follows:

The flag should be displayed on all days, especially on New Year's Day, January 1; Inauguration Day, January 20; Lincoln's Birthday, February 12; Washington's Birthday, the third Monday in February; Easter Sunday (variable); Mother's Day, second Sunday in May; Armed Forces Day, third Saturday in May; Memorial Day (half-staff until Noon), on the last Monday in May; Flag Day, June 14; Independence Day, July 4; Labor Day, first Monday in September; Citizenship Day, September 17; Columbus Day, the second Monday in October; Veterans Day, the fourth Monday in October; Thanksgiving Day, fourth Thursday in November; Christmas Day, December 25; such other days as may be proclaimed by the President of the United States; the birthdays of States (dates of admission); and on State holidays.

and, be it further

*Resolved, That Section 2(e) which reads as follows:*

"The flag should be displayed daily, weather permitting on or near the main administration building of every public institution."

be amended to read as follows:

The flag should be display daily on or near the main administration building of every public institution.

and, be it further

*Resolved, That Section 3(b) which reads as follows:*

"The flag should not be draped over the hood, top, sides, or back of a vehicle or of a railroad train or a boat. When the flag is displayed on a motor car, the staff shall be fixed firmly to the chassis or clamped to the radiator cap."

be amended to read as follows:

The flag should not be draped over the hood, top, sides, or back of a vehicle or of a railroad train or a boat. When the flag is displayed on a motor car, the staff shall be fixed firmly to the chassis or clamped to the right fender.

and, be it further

*Resolved, That Section 3(f) which reads as follows:*

"When flags of States, cities, or localities, or remnants of societies are flown on the same halyard with the flag of the United States, the latter should always

be at the peak. When the flags are down from adjacent staffs, the flag of the United States should be hoisted first and lowered last. No such flag or pennant may be placed above the flag of the United States or to the right of the flag of the United States."

be amended to read as follows:

When flags of States, cities, or localities, or pennants of societies are flown on the same halyard with the flag of the United States, the latter should always be at the peak. When the flags are flown from adjacent staffs, the flag of the United States should be hoisted first and lowered last. No such flag or pennant may be placed above the flag of the United States or to the right of the flag of the United States, its own right.

and, be it further

*Resolved*, That Section 3(k) which reads as follows:

"When used on a speaker's platform, the flag, if displayed flat, should be displayed above and behind the speaker. When displayed from a staff in a church or public auditorium, if it is displayed in the chancel of a church, or on the speaker's platform in a public auditorium, the flag should occupy the position of honor and be placed at the clergyman's or speaker's right as he faces the congregation or audience. Any other flag so displayed in the chancel or on the platform should be placed at the clergyman's or speaker's left as he faces the congregation or audience. But, when the flag is displayed from a staff in a church or public auditorium elsewhere than in the chancel or on the platform it shall be placed in the position of honor at the right of the congregation or audience as they face the chancel or platform. Any other flag so displayed should be placed on the left of the congregation or audience as they face the chancel or platform."

be amended to read as follows:

When used on a speaker's platform, the flag, if displayed flat, should be displayed above and behind the speaker. When displayed from a staff in a church or public auditorium, the flag of the United States of America should hold the position of superior prominence, in advance of the audience, and in the position of honor at the clergyman's or speaker's right as he faces the audience. Any other flag so displayed should be placed on the left of the clergyman or speaker or to the right of the audience.

and, be it further

*Resolved*, That Section 3(i) which reads as follows:

"When the flag is being displayed otherwise than being flown from a staff, it should be displayed flat, whether indoors or out, or so suspended that its folds fall as free as though the flag were staffed."

be amended to read as follows:

When displayed either horizontally or vertically against a wall, the union should be uppermost and to the flag's own right; that is, to the observer's left. When displayed in a window, the flag should be displayed in the same way with the union or blue field to the left of the observer in the street.

and, be it further

*Resolved*, That Section 3(m) which reads as follows:

"The flag, when flown at half-staff, should be first hoisted to the peak for an instant and then lowered to the half-staff position. The flag should be again raised to the peak before it is lowered for the day. By 'half-staff' is meant lowering the flag to one-half the distance between the top and bottom of the staff. Crepe streamers may be affixed to spearheads or flag-staffs in a parade only by order of the President of the United States."

be amended to read as follows:

The flag, when flown at half-staff, should be first hoisted to the peak for an instant and then lowered to the half-staff position. The flag should be again raised to the peak before it is lowered for the day. By "half-staff," it is meant lowering the flag to one-half the distance between the top and bottom of the staff. On Memorial Day the flag should be displayed at half-staff until noon only, then raised to the top of the staff. By order of the President of the United States, the National flag shall be flown at half-staff upon the death of principal figures of the United States Government and the Governor of a State, Territory or possession, as a mark of respect to their memory. In the event of the death of other officials or foreign dignitaries, the flag is to be displayed at half-staff according to Presidential instructions or orders, or "in accordance with recognized customs or practices not inconsistent with law." The Governor of a state may proclaim the National flag to be flown at half-staff upon the death of present

officials and former officials of State Government. The flag shall be flown at half-staff: Thirty days from the day of death of the President or a former President; ten days from the day of death of the Vice President, the Chief Justice or a retired Chief Justice of the United States, or the Speaker of the House of Representatives; from the day of death until interment of an Associate Justice of the Supreme Court, a member of the cabinet, a former Vice President, the Secretary of the Army, the Navy, or the Air Force, or the Governor of a State, Territory, or possession and on the day of death and the following day for a U.S. Senator, U.S. Representative, or the Resident Commissioner of Puerto Rico, and, be it further

*Resolved*, That Section 3(a) be added to read as follows:

When the flag is suspended across a corridor or lobby in a building with only one main entrance, it should be suspended vertically with the union of the flag to the observer's left upon entering. If the building has more than one main entrance, the flag should be suspended vertically near the center of the corridor or lobby with the union to the North, when entrances are to the East and West or to the East when entrances are to the North and South; if there are entrances in more than two directions, the union should be to the East, and, be it further

*Resolved*, That Section 4(a) which reads as follows:

"The flag should never be displayed with the union down save as a signal of dire distress,"

be amended to read as follows:

The flag should never be displayed with the union down, except as a signal of dire distress, that is, only in instances of extreme danger to life or property, and, be it further

*Resolved*, That Section 4(d) which reads as follows:

"The flag should never be used as drapery of any sort whatsoever, never festooned, drawn back, nor up, in folds, but always allowed to fall free. Bunting of blue, white and red, always arranged with the blue above, the white in the middle, and the red below, should be used for covering a speaker's desk, draping the front of a platform, and for decoration in general,"

be amended to read as follows:

The flag should never be used as wearing apparel, bedding, drapery, etc. It should never be festooned, drawn back, nor up, in folds, but always allowed to fall free. Bunting of blue, white and red, always arranged with the blue above, the white in the middle and the red below, should be used for covering a speaker's desk, draping the front of a platform, and for decoration in general, and, be it further

*Resolved*, That Section 4(e) which reads as follows:

"The flag should never be fastened, displayed, used or stored in such a manner as will permit it to be easily torn, soiled, or damaged in any way,"

be amended to read as follows:

The flag should never be fastened, displayed, used, or stored in such a manner as to permit it to be easily torn, soiled, or damaged in any way, and, be it further

*Resolved*, That Section 4(i) which reads as follows:

"The flag should never be used for advertising purposes in any manner whatsoever. It should not be embroidered on such articles as cushions or handkerchiefs and the like, printed or otherwise impressed on paper napkins or boxes or anything that is designed for temporary use and discard; or used as any portion of a costume or athletic uniform. Advertising signs should not be fastened to a staff or halyard from which the flag is flown,"

be amended to read as follows:

The flag should never be used for advertising purposes in any manner whatsoever. It should not be embroidered on such articles as cushions or handkerchiefs and the like, printed or otherwise impressed on paper napkins or boxes or anything that is designed for temporary use and discard. Advertising signs should not be fastened to a staff or halyard from which the flag is flown, and, be it further

*Resolved*, That Section 4(j) be referred to hereafter as Section 4(k) and that Section 4(i) will now read as follows:

The flag should never be used as a costume or athletic uniform or any portion thereof. However, a flag patch may be affixed to the uniform of military



personnel, firemen, policemen, and members of patriotic organizations. The flag represents a living country and is itself considered a living thing, therefore, the Lapel Flag Pin being a replica shall be worn on the left lapel near the heart, and, be it further

*Resolved*, That Section 5 which reads as follows:

"That during the ceremony of hoisting or lowering the flag or when the flag is passing in a parade or in a review, all persons present should face the flag, stand at attention, and salute. Those present in uniform should render the military salute. When not in uniform, men should remove the headdress with the right hand holding it at the left shoulder, the hand being over the heart. Men without hats should salute in the same manner, at attention. Women should salute by placing the right hand over the heart. The salute to the flag in the moving column should be rendered at the moment the flag passes." be amended to read as follows:

That during the ceremony of hoisting or lowering the flag or when the flag is passing in a parade or in review, all persons present should face the flag, stand at attention and salute. Those present in uniform should render the military salute. When not in uniform, men should remove their headdress with their right hand and hold it at the left shoulder, the hand being over the heart. Men without hats should salute in the same manner. Aliens should stand at attention. Women should salute by placing the right hand over the heart. The salute to the flag in the moving column should be rendered at the moment the flag passes, and, be it further

*Resolved*, That Section 7 which reads as follows:

"That the Pledge of Allegiance to the Flag, 'I pledge allegiance to the Flag of the United States of America and to the Republic for which it stands, one Nation under God, indivisible, with liberty and justice for all.' Such pledge should be rendered by standing with the right hand over the heart. However, civilians will always show full respect to the Flag when the pledge is given by merely standing at attention, men removing the headdress. Persons in uniform shall render the military salute."

be amended to read as follows:

That the Pledge of Allegiance to the Flag, "I pledge allegiance to the Flag of the United States of America and to the Republic for which it stands, one Nation under God, indivisible, with liberty and justice for all," be rendered by standing with the right hand over the heart. Men should remove their headdress and hold over the heart. Men without hats should salute in the same manner. Persons in uniform shall render the military salute, and, be it further

*Resolved*, That Section 8 be amended by the addition of Section 8(a) and that Section 8 as it now reads become Section 8(b). Section 8(a) will read as follows:

The Commander in Chief of the Armed Forces of the United States of America shall appoint a National Flag Commission for the purpose of necessary study and revision of the Flag Code, "Public Law 829,"

and, be it further

*Resolved*, That Section 9 be added for the purpose of a penalty clause, said clause to be known as Disrespect to the Flag of the United States of America, with Section 9 to read as follows:

Whoever knowingly casts contempt upon any flag of the United States of America by publicly showing disrespect contrary to Public Law 829 (Flag Code) shall be fined not more than \$1,000 or imprisoned for not more than one year, or both.

The term, "flag of the United States," as used in this section, shall include any flag, standard, colors, ensign, or any picture or representation of either, or of any part or parts of either, made of any substance or represented on any substance, of any size evidently purporting to be either of said flag, standard, colors, or ensign of the United States of America, or a picture or a representation of either, upon which shall be shown the colors, the stars and the stripes, in any number of either thereof, or of any part or parts of either, by which the average person seeing the same without deliberation may believe the same to represent the flag, standards, colors, or ensign of the United States of America, and, be it further

*Resolved*, That this resolution shall supersede all prior resolutions and become the adopted policy of The American Legion and its National Americanism Commission as it relates to Public Law 829 (Flag Code), and with all prior

resolutions pertaining to the Flag Code being rescinded as of the date of adoption of this resolution.

Senator HRTSKA. The bill to which you refer also calls for the creation of a commission, as you know.

Mr. O'CONNOR. Yes, Mr. Chairman.

Senator HRTSKA. What comments would you have on that?

Mr. O'CONNOR. We believe very strongly in the formation of a flag commission which could serve as the medium to which patriotic and civic groups and any citizen could present his views. It would serve, in my judgment, as the instrument for the Congress of the United States in the years to come to receive recommendations and further updating of the U.S. flag code. We, therefore, strongly urge the creation of a flag commission.

Senator HRTSKA. Section 8(a) is the section to which I referred. the Commander in Chief of the Armed Forces of the United States shall appoint a national flag commission for the purpose of the necessary study and revision of this joint resolution.

As I understand it, your position is that you want to support the content and substance of S.J. Res. 91?

Mr. O'CONNOR. Except that I would like to make this comment: It is important that the flag commission be established, and if the legislative branch of the U.S. Government takes the lead in the creation of a commission, the American Legion would gladly support it, and this I so state. It is not our position that it must be appointed by the President. After all, we have gone to the Office of the White House. For example, I attended a session 5 years ago with the President's counsel, in the hope that these recommendations which have been formulated in S.J. Res. 91 and which in substance were written by the American Legion and adopted at national conventions would be adopted without any penal provision by proclamation. But there has been no action. We are very grateful to you, Mr. Chairman, and to this Senate Judiciary Subcommittee, for this opportunity because you have recognized what we have been striving to do. Therefore, if the flag commission is a creation of the Congress of the United States, we would gladly support it.

Senator HRTSKA. Would you be in favor of attaching a provision imposing criminal penalties for violation of a provision of the code?

Mr. O'CONNOR. Mr. Chairman, that is a difficult question to answer.

Senator HRTSKA. It is indeed, that is why I want some enlightenment on it.

Mr. O'CONNOR. Let me say this: We believe there should be some minor penalties somewhere included. However, if it means sacrificing the legislation and not having it achieved by bicentennial year 1976, I think it is a matter which might require very intense study by counsel. Therefore, we would not hesitate to recommend the adoption of legislation for a flag commission and the revisions of the flag code, with a view to later on provide some type of sanction on the minor penalties. We are not talking about the major ones, because President Johnson already signed into law a specific sanction against those who would commit major crimes against the flag. When I say major crimes, I mean burning the flag, for example.

in Central Park in New York City in effigy, ridiculing the President of the United States, referring to the Commander in Chief as a murderer coincident with the burning of the flag in derision and contempt. That is already enacted into law. I am talking about such things as the case in Boston, Mass., where a young man sewed the American flag to the seat of his pants. He was arrested and prosecuted, but the U.S. Supreme Court struck down the Massachusetts legislation for being what you very accurately described here a few minutes ago as constitutionally vague. I would rather not risk waiting on putting the penalties in, even minor in nature, to achieve the amendments that we all believe should be adopted and all of us support here today, including the American Legion, and also for the creation of the flag commission.

Senator Hruska. That case to which you refer is entitled *Smith v. Sheriff Goguen*. It was decided on March 25 of this year.

Mr. O'CONNOR. Yes.

Senator Hruska. And it struck down the Massachusetts statute directed against misuse of the flag on the ground that the language of the statute is, "void for vagueness under the due process clause of the 14th amendment," and so on.

That is how we tread into difficult ground, very difficult ground. And if an attempt is made to put a criminal sanction on the flag code, I am afraid we are in for deep trouble. Who is to say? Who is to say that if the code provides that there shall be no globe or eagle on the top of the flagpole that flies an American flag, that that is desecration, or defiling, or showing disrespect for it, and if you do that, you are going to be punished? Now, I have one of the best flagpoles in Douglas County, Neb. It sits on a little mound in my yard, and there is a great big gold plated eagle up on top. I would very much dislike having to remove that.

Mr. O'CONNOR. Mr. Chairman, I could not agree with you more. But if you will forgive me for saying so, there is one hell of a difference between what you have just cited as your love, respect, and honor for our national colors and the character up in Massachusetts who wore the flag on the seat of his pants.

Senator Hruska. There sure is.

Mr. O'CONNOR. The problem is what kind of language would be acceptable to the U.S. Supreme Court that is not constitutionally vague and would permit a penalty against what I would consider in that case an offender, in contrast to the situation you have described, where you have given honor, love, and affection to our national colors.

Senator Hruska. Well, that is right. There is a difference. But you see, it depends on the language used. You and I might not think of the Supreme Court decision and its results, but that is the law under which we are going to function. That is your oath, and that is my oath. And when they say that he did not treat contemptuously, when they say in their opinion that by challenging in State courts the vagueness of the "treats contemptuously" phrase as applied to him, the appellant preserved his due process claim \* \* \* for habeas corpus jurisdiction.

So the question was: Was the description of the conduct that was prohibitive sufficiently definite for this young man to have known? They decided not. That was the question.

Mr. O'CONNOR. I know they did, Mr. Chairman, but I would like the Supreme Court—and I am sure all of us would—to tell us what the motive of that young man was at the time he affixed the national colors to the seat of his pants. In my judgment, they would have to say that it was done to hold our national colors up to contempt, and that was the purpose of the Massachusetts legislation.

Senator Hruska. That is right. Then we get down to the criminal sanction, however. If you attach a criminal sanction to a flag code like we have now, then you are going to have to go to the Supreme Court if there is a prosecution under that and say there was a violation of the code. The man did not wear the button showing a flag on his lapel; he had cuff links made out of it, or he put it on his necktie, or he put it on his shirt. The lapel of a coat is not a shirt. And you are going to say, we are going to fine him \$5, \$25, \$100. What do you think the court will say about the right of self-expression?

Mr. O'CONNOR. I absolutely agree with the position you have stated. What you have spelled out is the grave difficulty in drawing the line. But the very fact that you concede that there is a line would indicate that there are situations which should be punished, and that is our position. I am saying that under these circumstances, that would require more study and more research, and as it stands now, we support the revisions in the flag code and the creation of the Flag Commission. This other area, I would think we would have to leave for intense study, and with counsel to the committee and our own resources, we would do all we could together to someday arrive at what we hope would be constitutionally clear and not vague. At this point, however, we ask for support for the resolution on the basis of flag code revision and the creation of a flag commission.

Senator Hruska. That is fine. I am sure there is no difference in our objectives. I am sure of that. The question is how to arrive at them when you start putting words on paper.

Mr. Counsel?

Mr. COLLINS. In a statement speaking about the flag commission. The American Legion favored a permanent commission as contrasted with Senator Tower's approach of a temporary commission making a report in just 1 year. Could you give us your thoughts on that?

Mr. O'CONNOR. I think we would want a permanent commission because after they made a report in 1 year, then what would you do 5, 10, or 15 years from now? It is true we went without a flag code for 150 years. Then when we established one, as you well know—for the past quarter of a century—all these problems have arisen, and that is the reason we are asking for a flag code revision. So if you put the commission in existence for one year and it goes out because it has adopted a flag code, then what would you do? You would have to originate another temporary commission 10 or 15 years from now. As I understand, this is not going to be a paid commis-



sion. It would be those who serve on a voluntary basis, except, if I am correct, there would be reimbursement for expenses for travel and ordinary incidental expense.

Mr. COLLINS. But you would prefer a permanent commission?

Mr. O'CONNOR. Yes.

Mr. COLLINS. And you take the approach that the commission should be appointed by the President?

Mr. O'CONNOR. No, I do not. I say that while The American Legion suggested that in its resolution, we are in favor of the creation of a national flag commission, whether it be by the President or by the Congress.

I also testified that we asked the executive branch of the Government over 5 years ago to proceed with these revisions, which could have been done by Presidential proclamation, since they contain no criminal sanctions.

The point that the Senator made was that if you had criminal sanctions, you are in a dangerous area. You sure are. If you have criminal sanctions, the President cannot repeal them, either. I am certain the President, if he wanted to modify, could modify them, but he certainly could not repeal the criminal sanction enacted by the Congress. So I want to make it unequivocally clear that the American Legion will support very strongly a commission formulated by the Congress of the United States.

Mr. COLLINS. Are you saying, then, that The American Legion would also support the approach taken by Senator Tower for the creation of a commission?

Mr. O'CONNOR. Yes. We would support whichever the Judiciary Subcommittee in its best interests felt was best for the United States. We want the flag commission created, and we would like to see it created through legislation, whether it be Senator Tower's temporary commission or a permanent commission. What we are trying to do is to move on this legislation. Our preference is to have the flag commission in existence to consider in the days to come any changes.

Mr. COLLINS. As part of an attachment to your statement, you delineate all of the proposed revisions made by the approach taken in S.J. Res. 91.

Mr. O'CONNOR. Yes.

Mr. COLLINS. I think Mr. Finger in his statement pretty much covered those salient points. Do you have any you want to highlight yourself, or has Mr. Finger covered them in his statement?

Mr. O'CONNOR. Of course, Mr. Collins, these are our own composition. In fact, the language in this resolution is identical to what The American Legion passed. So unless you wish to question me concerning any specific section, we are willing to let our own written recommendations stand.

Mr. COLLINS. Mr. Finger basically covered all these points.

Mr. O'CONNOR. Yes, he did. There is one point that Mr. Finger made in answer to the Senator's question concerning mayors: The whole idea behind limiting flag lowering privileges to the President of the United States. We certainly do not think that privilege should go down below the Governor of the State. In the case that they referred to of a former mayor of New York City lowering the flag, that was in direct contradiction to the position of the Congress

of the United States and most Americans in supporting our men overseas. That symbol at that time was done in sympathy with Vietnam Veterans Against the War and caused great controversy. We used every influence at our command to prevent that incident, and we succeeded. I think that is an abuse when you get down to the office of mayor, and we would not favor that.

Senator HRUSKA. Thank you, all three of you, for appearing. Have you something, Mr. Mattingly, to add to the testimony given?

Mr. MATTINGLY. Senator Hruska, my chief purpose in being here this morning is to accompany our expert witness. I would like to introduce the assistant director of the division which staffs Mr. O'Connor's commission. Mr. Charles E. Masters, assistant director of the Legion's Americanism Division.

Senator HRUSKA. I see in the commission room Mr. Frank Specht, who is very, very active in your Legion and the National Headquarters.

Frank, would you come up here, sit at the witness table, and join your colleagues? We know you thought many years of your having an abiding interest in the program of The American Legion.

You may proceed, Mr. Mattingly.

Mr. MATTINGLY. Mr. Chairman, I have no statement as such. Daniel J. O'Connor, our witness who has just testified, is, as you know, well known throughout the country in patriotic circles as well as veterans' organizations. He has been the chairman of our National Americanism Commission since the year 1962. Prior to that time, he was an active member of that commission, and I believe he has amply demonstrated here today his familiarity and his expertise in this particular field.

We do appreciate very, very much the opportunity that you gave us today to make our recommendations known to your subcommittee.

Senator HRUSKA. Have you anything further to add?

Mr. MASTERS. No, Mr. Chairman.

Senator HRUSKA. Very well.

The opinion in the *Smith* case, which was issued on March 25, 1974, is quite historical, because there are concurring opinions, there are dissenting opinions, and a review of the entire subject is made of decisions on this subject. The text of the opinions will be printed at a suitable place in the record. Mr. Counsel, and you will determine that editorially.

[The above-referred-to opinion follows:]

Supreme Court of the United States

*syllabus*

SMITH, SHERIFF

v.

GOGUEN

APPEAL FROM THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT  
No. 72-1254. Argued November 12-13, 1973—Decided March 25, 1974

Appellee, for wearing a small United States flag sewn to the seat of his trousers, was convicted of violating the provision of the Massachusetts flag misuse statute that subjects to criminal liability anyone who "publicly . . . treats contemptuously the flag of the United States . . ." The Massachusetts Supreme Judicial Court affirmed. The District Court in appellee's habeas corpus action

found the "treats contemptuously" phrase of the statute unconstitutionally vague and overbroad. The Court of Appeals affirmed. *Held*:

1. The challenged statutory language, which had received no narrowing state court interpretation, is void for vagueness under the Due Process Clause of the Fourteenth Amendment, since by failing to draw reasonably clear lines between the kind of non-ceremonial treatment of the flag that are criminal and those that are not it does not provide adequate warning of forbidden conduct and sets forth a standard so indefinite that police, court and jury are free to react to nothing more than their own preferences for treatment of the flag. Pp. 6-9, 12.

2. By challenging in state courts the vagueness of the "treats contemptuously" phrase as applied to him, appellee preserved his due process claim for purposes of federal habeas corpus jurisdiction, *Picard v. Connor*, 404 U.S. 270, since the challenged language is void for vagueness as applied to appellee or to anyone else. A "hard-core" violator concept has little meaning with regard to the challenged language, because the phrase at issue is vague not in the sense of requiring a person to conform his conduct to an imprecise but comprehensible standard, but in the sense of not specifying any ascertainable standard of conduct at all. Pp. 10-12.

3. Even if, as appellant contends, the statute could be said to deal only with "actual" flags of the United States, this would not resolve the central vagueness deficiency of failing to define contemptuous treatment. Pp. 12-13.

4. That other words of the desecration and contempt portion of the statute address more specific conduct (mutilation, trampling, and defacing of the flag) does not assist appellant, since appellee was tried solely under the "treats contemptuously" phrase, and the highest state court in this case did not construe the challenged phrase as taking color from more specific accompanying language. P. 13.

5. Regardless of whether restriction by that court of the scope of the challenged phrase to intentional contempt may be held against appellee, such an interpretation nevertheless does not clarify what conduct constitutes contempt of the flag, whether intentional or inadvertent. Pp. 13-14.  
471 F. 2d 88, affirmed.

POWELL, J., delivered the opinion of the Court, in which DOUGLAS, BRENNAN, STEWART, and MARSHALL, JJ., joined. WHITE, J., filed an opinion concurring in the judgment. BLACKMUN, J., filed a dissenting opinion, in which BURGER, C. J., joined. REHNQUIST, J., filed a dissenting opinion, in which BURGER, C. J., joined.

Supreme Court of the United States

No. 72-1254

JOSEPH SMITH, SHERIFF OF WORCESTER COUNTY,  
APPELLANT

v.

VALARIE GOGUEN

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

[March 25, 1974]

Mr. Justice POWELL delivered the opinion of the Court.

The Sheriff of Worcester County, Massachusetts, appeals from a judgment of the United States Court of Appeals for the First Circuit holding the contempt provision of the Massachusetts flag misuse statute unconstitutionally vague and overbroad, *Goguen v. Smith*, 471 F. 2d 88, aff'g, 243 F. Supp. 161 (Mass. 1972), prob. juris. noted, 192 U.S. 635 (1973). We affirm on the vagueness ground. We do not reach the correctness of the holding below on overbreadth or other First Amendment grounds.

I

The slender record in this case reveals little more than that Goguen wore a small cloth version of the United States flag sewn to the seat of his trousers.<sup>1</sup>

<sup>1</sup> The record consists solely of the amended bill of exceptions Goguen filed in the Massachusetts Supreme Judicial Court, the opposing briefs before that court, the complaint under which Goguen was prosecuted, and Goguen's federal habeas corpus petition. Appendix 1-36, 42-43. We do not have a trial transcript, although Goguen's amended bill of exceptions briefly summarizes some of the testimony given by witnesses for the prosecution at his state trial. Goguen did not take the stand. Thus we do not have of record his account of what transpired at the time of his arrest or of his purpose in wearing a flag on the seat of his trousers.

The flag was approximately four by six inches and was displayed to the left rear of Goguen's blue jeans. On January 30, 1970, two police officers in Leominster, Massachusetts saw Goguen bedecked in that fashion. The first officer encountered Goguen standing and talking with a group of persons on a public street. The group apparently was not engaged in any demonstration or other protest associated with Goguen's apparel.<sup>2</sup> No disruption of traffic or breach of the peace occurred. When this officer approached Goguen to question him about the flag, the other persons present laughed. Some time later, the second officer observed Goguen in the same attire walking in the downtown business district of Leominster.

The following day the first officer swore out a complaint against Goguen under the contempt provision of the Massachusetts flag misuse statute. The relevant part of the statute then read:

"Whoever publicly mutilates, tramples upon, defaces or treats contemptuously the flag of the United States . . . , whether such flag is public or private property . . . , shall be punished by a fine of not less than ten nor more than one hundred dollars or by imprisonment for not more than one year, or both. . . ."

Despite the first six words of the statute, Goguen was not charged with any act of physical desecration.<sup>3</sup> As permitted by the disjunctive structure of the desecration and contempt portion of the statute, the officer charged specifically and only that Goguen "did publicly treat contemptuously the flag of the United States. . . ."

After jury trial in the Worcester County Superior Court, Goguen was found guilty. The court imposed a sentence of six months in the Massachusetts House of Corrections. Goguen appealed to the Massachusetts Supreme Judicial Court, which affirmed. *Commonwealth v. Goguen*, — Mass. —, 279 N. E. 2d 666 (1972). That court rejected Goguen's vagueness argument with the comment that "[w]hatever the uncertainties in other circumstances, we see no vagueness in the statute as applied here." *Id.*, — Mass., at —, 279 N.E. 2d, at 667. The

<sup>2</sup> Tr. of Oral Arg. 5-6, 35-36.

<sup>3</sup> Mass. Gen. Laws Ann. c. 264, § 5 (1971). Omitting several sentences protecting the ceremonial activities of certain veterans' groups, the statute read as follows at the time of Goguen's arrest and conviction:

"§ 5. Flag: penalty for misuse

"Whoever publicly mutilates, tramples upon, defaces or treats contemptuously the flag of the United States or of Massachusetts, whether such flag is public or private property, or whoever displays such flag or any representation thereof upon which are word, figures, advertisements or designs, or whoever causes or permits such flag to be used in a parade as a receptacle for depositing or collecting money or any other article or thing, or whoever exposes to public view, manufactures, sells, exposes for sale, gives away or has in possession for sale or to give away or for any purpose, any article or substance, being an article of merchandise or a receptacle of merchandise or articles upon which is attached, through a wrapping or otherwise, engraved or printed in any manner, a representation of the United States flag, or whoever uses any representation of the arms or the great seal of the commonwealth for any advertising or commercial purpose, shall be punished by a fine of not less than ten nor more than one hundred dollars or by imprisonment for not more than one year, or both. Words, figures, advertisements or designs attached to, or directly or indirectly connected with, such flag or any representation thereof in such manner that such flag or its representation is used to attract attention to or advertise such word, figures, advertisements or designs, shall for the purposes of this section be deemed to be upon such flag."

The statute is an amalgam of provisions dealing with flag desecration and contempt (the first 26 words) and with commercial misuse or other exploitation of flags of the state and national government. This case concerns only the "treats contemptuously" phrase of the statute, which has apparently been in the statute since its enactment in 1899. *Goguen v. Smith*, *supra*, 471 F. 2d, at 90, n. 2.

In 1971, subsequent to Goguen's prosecution, the desecration and contempt portion of the statute was amended twice. On March 8, 1971, the legislature, per St. 1971, c. 74, modified the first sentence by inserting "burns or otherwise" between the terms "publicly" and "mutilates," and, in addition, by increasing the fine. Mass. Gen. Laws Ann. c. 264, § 5 (1972 Supp.). On August 12, 1971, via St. 1971, c. 655, the legislature appended a new sentence defining "the flag of the United States" phrase appearing in the first sentence: "For the purposes of this section the term 'flag of the United States' shall mean any flag which has been designated by Act or Resolution of the Congress of the United States as the national emblem, whether or not such designation is currently in force." *Id.* The 1971 amendments are relevant to this case only in the tangential sense that they indicate a recognition by the legislature of the need to tighten up this imprecise statute.

<sup>4</sup> Perhaps this was because of the difficulty of the question whether Goguen's conduct constituted physical desecration of the flag. Cf. *Goguen v. Smith*, *supra*, 471 F. 2d, at 91, n. 4 ("... [W]e are not so sure that sewing a flag to a background clearly affects 'physical integrity.'").

<sup>5</sup> Appendix 4.



court cited no Massachusetts precedents interpreting the "treats contemptuously" phrase of the statute.<sup>5</sup>

After Goguen began serving his sentence, he was granted bail and then ordered released on a writ of habeas corpus by the United States District Court for the District of Massachusetts. *Goguen v. Smith*, *supra*, 343 F. Supp. 161. The District Court found the flag contempt portion of the Massachusetts statute impermissibly vague under the Due Process Clause of the Fourteenth Amendment as well as overbroad under the First Amendment. In upholding Goguen's void for vagueness contentions, the court concluded that the words "treats contemptuously" did not provide a "readily ascertainable standard of guilt." *Id.*, at 167. Especially in "these days when flags are commonly displayed on hats, garments and vehicles . . ." the words under which Goguen was convicted "leave conjectural, in many instances, what conduct may subject the actor to criminal prosecution." *Ibid.* The court also found that the statutory language at issue "may be said to encourage arbitrary and erratic arrests and convictions." *Ibid.*

The Court of Appeals, with one judge concurring, affirmed the District Court on both First Amendment and vagueness grounds. *Goguen v. Smith*, *supra*, 471 F. 2d 88. With regard to the latter ground, the Court of Appeals concluded that "resolution of [Goguen's void for vagueness] challenge to the statute as applied to him necessarily adjudicates the statute's facial constitutionality . . ." *Id.*, at 94. Treating as-applied and on-the-face vagueness attacks as essentially indistinguishable in light of the imprecision of the statutory phrase at issue, *id.*, at 92, 94, the court found that the language failed to provide adequate warning to anyone, contained insufficient guidelines for law enforcement officials, and set juries and courts at large. *Id.*, at 94-96. Senior Circuit Judge Hanley, sitting by designation from the Ninth Circuit, concurred solely in the void-for-vagueness holding. *Id.*, at 105. Judge Hanley saw no need to reach the "far broader constitutional ground" of First Amendment overbreadth relied on by the majority, noting the "settled principle of appellate adjudication that constitutional questions are not to be dealt with unless this is necessary to dispose of the appeal." *Ibid.*

## II

We agree with the holdings of the District Court and the Court of Appeals on the due process doctrine of vagueness. The settled principles of that doctrine require no extensive restatement here.<sup>6</sup> The doctrine incorporates notions of fair or warning.<sup>7</sup> Moreover, it requires legislatures to set reasonably clear guidelines for law enforcement officials and triers of fact in order to prevent "arbitrary and discriminatory enforcement."<sup>8</sup> Where a statute's literal scope, unaided by a narrowing state court interpretation, is capable of reaching expression sheltered by the First Amendment, the doctrine demands a greater degree of

<sup>5</sup> Appellant correctly conceded at oral argument that Goguen's case is the first recorded Massachusetts court reading of this language. Tr. of Oral Arg. 17-18. Indeed, with the exception of one turn of the century case involving one of the statute's commercial misuse provisions, *Commonwealth v. R. J. Sherman Yarn Co.*, 189 Mass. 76, 75 N. E. 71 (1905), the entire statute has been essentially devoid of state court interpretation.

<sup>6</sup> The elements of the void for vagueness doctrine have been developed in a large body of precedent from this Court. The cases are categorized in, e.g., *Grain Processing Co. v. City of Rockford*, 408 U.S. 104, 108-109 (1972). See, Amsterdam, "The Void-for-Vagueness Doctrine in the Supreme Court," 109 F. Pa. L. Rev. 67 (1960).

<sup>7</sup> E.g., *Papachristou v. City of Jacksonville*, 405 U.S. 156, 162 (1972); *Lanzetta v. New Jersey*, 306 U.S. 451, 453 (1939).

<sup>8</sup> "No one may be required at peril of life, liberty or property to speculate as to the meaning of penal statutes. All are entitled to be informed as to what the State commands or forbids." (Citations omitted.)

*Connally v. General Construction Co.*, 269 U.S. 385, 391 (1926): "... [A] statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application, violates the first essential of due process of law." (Citations omitted.)

<sup>9</sup> E.g., *Gutman*, *supra*, 405 U.S. at 108; *United States v. I. Cohen Grocery Co.*, 255 U.S. 81, 89 (1921) ("... [T]he attempt to enforce the section would be the exact equivalent of an effort to carry out a statute which in terms merely penalized, and punished all acts detrimental to the public interest when unjust and unreasonable to the estimation of the court and jury."); *United States v. Price*, 92 U.S. 234, 221 (1875) ("It would certainly be dangerous if the legislature could set a net large enough to catch all possible offenders, and leave it to the courts to step inside and say who could be rightfully detained, and who should be set at large.")

specificity than in other contexts.<sup>12</sup> The statutory language at issue here, "publicly . . . treats contemptuously the flag of the United States . . ." has such scope, e.g., *Street v. New York*, 394 U.S. 576 (1969) (verbal flag contempt), and at the relevant time was without the benefit of judicial clarification.<sup>13</sup>

Flag contempt statutes have been characterized as void for lack of notice on the theory that "[w]hat is contemptuous to one man may be a work of art to another." Goguen's behavior can hardly be described as art. Immaturity or "silly conduct" probably comes closer to the mark. But we see the force of the District Court's observation that the flag has become "an object of youth fashion and high camp . . ." 343 F. Supp. at 164. As both courts below noted, casual treatment of the flag in many contexts has become a wide-spread contemporary phenomenon. *Id.*, at 164, 167; 471 F.2d, at 96. Flag wearing in a day of relaxed clothing styles may be simply for adornment or a ploy to attract attention. It and many other current, careless uses of the flag nevertheless constitute unceremonious treatment that many people may view as contemptuous. Yet in a time of widely varying attitudes and tastes for displaying something as ubiquitous as the United States flag or representations of it, it could hardly be the purpose of the Massachusetts legislature to make criminal every informal use of the flag. The statutory language under which Goguen was charged, however, fails to draw reasonably clear lines between the kinds of unceremonious treatment that are criminal and those that are not. Due process requires that all "be informed as to what the State commands or forbids . . ." *Lunzetta v. New Jersey*, 306 U.S. 451, 453 (1939), and that "men of common intelligence" not be forced to guess at the meaning of the criminal law. *Connelly v. General Construction Co.*, 269 U.S. 385, 391 (1925). Given today's tendencies to treat the flag unceremoniously, those notice standards are not satisfied here.

We recognize that in a noncommercial context behavior as a general rule is not mapped out in advance on the basis of statutory language.<sup>14</sup> In such cases, perhaps the most meaningful aspect of the vagueness doctrine is not actual notice but the other principal element of the doctrine—the requirement that a legislature establish minimal guidelines to govern law enforcement. It is in this regard that the statutory language under scrutiny has its most notable deficiencies.

In its terms, the language at issue is sufficiently unbounded to prohibit, as the District Court noted, "any public deviation from formal flag etiquette. . . ." 343 F. Supp. at 167. Unchanged throughout its 70-year history, the "treats contemptuously" phrase was also devoid of a narrowing state court interpretation at the relevant time in this case.<sup>15</sup> We are without authority to cure that defect.<sup>16</sup> Statutory language of such a standardless sweep allows policemen, prosecutors, and juries to pursue their personal predilections. Legislatures may not so abdicate their responsibilities for setting the standards of the criminal law. E.g., *Papachristou v. City of Jacksonville*, 405 U.S. 156, 163-169 (1972). In *Gregory v. City of Chicago*, 394 U.S. 111, 120 (1969), Mr. Justice Black voiced a concern that we share against entrusting lawmaking "to the moment-to-moment judgment of the policeman on his beat." The aptness of his admonition is evident from appellant's candid concession during oral argument before the Court of Appeals regarding state enforcement standards for that portion of the statute under which Goguen was convicted:

<sup>12</sup> E.g., *Graind*, *supra*, 408 U.S., at 169; *Smith v. California*, 361 U.S. 147, 151 (1959). Compare the less stringent requirements of the modern vagueness cases dealing with purely economic regulation. E.g., *United States v. National Dairy Prod. Corp.*, 372 U.S. 29 (1963) (Kilgus-Patman Act).

<sup>13</sup> See n. 6, *supra*.

<sup>14</sup> Note, 66 Mich. L. Rev. 1040, 1056 (1968).

<sup>15</sup> *Goguen v. Smith*, *supra*, 343 F. Supp. at 166.

<sup>16</sup> *Amsterdam, supra*, 169 U. Pa. L. Rev., at 82, n. 79.

<sup>17</sup> See n. 6, *supra*.

<sup>18</sup> See n. 6, *supra*. The contempt portion of the Massachusetts statute seems to have lain fallow for almost its entire history. Apparently there have been about a half dozen arrests under this part of the statute in recent years, but none has produced a reported decision. Tr. of Oral Arg. 28-29. In 1968 a teenager in Lynn, Massachusetts was charged, apparently under the present statute, with desecrating the United States flag by sewing pieces of it to his trousers. New York Times, August 1, 1968, p. 21, col. 1. The teenager was ordered by a state district court to prepare and deliver an essay on the flag. The court continued the case without a finding, depriving it of any precedential value.

<sup>19</sup> E.g., *United States v. Thirty-seven Photographs*, 402 U.S. 363, 369 (1971).

"... [A]s counsel [for appellant] admitted, a war protestor who, while attending a rally at which it begins to rain, evidences his disrespect for the American flag by contemptuously covering himself with it in order to avoid getting wet, would be prosecuted under the Massachusetts statute. Yet a member of the American Legion who, caught in the same rainstorm while returning from an 'America—Love It or Leave It' rally, similarly uses the flag, but does so respectfully and without a contemptuous attitude, would *not* be prosecuted." 371 F. 2d, at 102 (emphasis in original).

Where inherently vague statutory language permits such selective law enforcement, there is a denial of due process.

### III

Appellant's arguments that the "treats contemptuously" phrase is not impermissibly vague, or at least should not be so held in this case, are unpersuasive. Appellant devotes a substantial portion of his opening brief, as he did his oral argument, to the contention that Goguen failed to preserve his present void for vagueness claim for the purposes of federal habeas corpus jurisdiction. Appellant concedes that the issue of "vagueness as applied" is properly before the federal courts,<sup>1</sup> but contends that Goguen's only arguable claim is that the statute is vague on its face. The latter claim, appellant insists, was not presented to the state courts with the requisite fair precision. *Picard v. Connor*, 404 U.S. 270 (1971). This exhaustion of remedies argument is belatedly raised,<sup>2</sup> and it fails to take the full measure of Goguen's efforts to mount a vagueness attack in the state courts.<sup>3</sup> We do not deal with the point at length, however, for we find the relevant statutory language impermissibly vague as applied to Goguen. Without doubt the "substance" of this claim was "fairly presented" to the state courts under the exhaustion standards of *Picard*, *supra*, 404 U.S., at 275, 278.

Appellant's exhaustion of remedies argument is premised on the notion that Goguen's behavior rendered him a hard-core violator as to whom the statute was not vague, whatever its implications for those engaged in different conduct. To be sure there are statutes that by their terms or as authoritatively construed apply without question to certain activities, but whose application to other behavior is uncertain. The hard-core violator concept makes some sense with regard to such statutes. The present statute, however, is not in that category. This criminal provision is vague "not in the sense that it requires a person to conform his conduct to an imprecise but comprehensible normative standard, but rather in the sense that no standard of conduct is specified at all." *Coates v. City of Cincinnati*, 402 U.S. 611, 614 (1971). Such a provision simply has no core. This absence of any ascertainable standard for inclusion and exclusion is precisely what offends the Due Process Clause. The deficiency is particularly objectionable in view of the unfettered latitude thereby accorded law enforcement officials and triers of fact. Until it is corrected either by amendment or judicial construction, it affects all who are prosecuted under the statutory language. In our opinion the defect exists in this case. The language at issue is void for vagueness as applied to Goguen because it subjected him to criminal

<sup>1</sup> Reply Brief 4.

<sup>2</sup> Goguen filed his federal habeas corpus petition subsequent to *Picard*, *supra*. Yet it appears that appellant did not raise his present exhaustion of remedies argument before the District Court. That court commented specifically on this omission: "No contention is now made that [Goguen] has not exhausted state remedies, nor that the constitutional issues presented here were not raised appropriately in state proceedings." 313 F. Supp., at 164.

<sup>3</sup> Goguen filed in state superior court an unsuccessful motion to dismiss the complaint in which he cited the Fourteenth Amendment and alleged that the statute under which he was charged was "impermissibly vague and incapable of fair and reasonable interpretation by public officials." Appendix 1. This motion was also before the Massachusetts Supreme Judicial Court since it was incorporated in Goguen's amended bill of exceptions. *Id.* In addition, Goguen's brief before that Court raised vagueness points and cited vagueness cases. *Id.*, at 19-26-27, citing *Lauretta v. New Jersey*, 206 U.S. 451 (1920), and *Parker v. Magan*, 322 F. Supp. 585 (WD N.C. 1971) (three-judge court) (North Carolina flag contempt statute void for vagueness and overbreadth). Appellant is correct in asserting that Goguen failed to compartmentalize in his state court brief the due process doctrine of vagueness and First Amendment concepts of overbreadth. See Appendix 19-21. But permitting a degree of leakage between those particular adjoining compartments is understandable. Cf. Note, "The First Amendment Overbreadth Doctrine," 83 Harv. L. Rev. 844, 871-875 (1970). The highest state court's opinion, which dealt separately with Goguen's First Amendment and vagueness claims, *Commonwealth v. Goguen*, *supra*, — Mass., at —, 279 N. E. 2d at 687, indicates that that court was well aware that Goguen raised both sets of arguments.

liability under a standard so indefinite that police, court, and jury were free to react to nothing more than their own preferences for treatment of the flag.

Turning from the exhaustion point to the merits of the vagueness question presented, appellant argues that any notice difficulties are ameliorated by the narrow subject matter of the statute, "actual" flags of the United States.<sup>21</sup> Appellant contends that this "takes some of the vagueness away from the phrase, 'treats contemptuously . . .'"<sup>22</sup> Anyone who "wants notice as to what conduct this statute proscribes . . ." immediately knows that it has something to do with flags and if he wants to stay clear of violating this statute, he just has to stay clear of doing something to the United States flag.<sup>23</sup> Apart from the ambiguities presented by the concept of an "actual" flag,<sup>24</sup> we fail to see how this alleged particularity resolves the central vagueness question—the absence of any standard for defining contemptuous treatment.

Appellant's remaining arguments are equally unavailing. It is asserted that the first six words of the statute add specificity to the "treats contemptuously" phrase, and that the Massachusetts Supreme Judicial Court customarily construes general language to take on color from more specific accompanying language. But it is conceded that Goguen was convicted under the general phrase alone, and that the highest state court did not rely on any general-to-specific principle of statutory interpretation in this case.<sup>25</sup> Appellant further argues that the Supreme Judicial Court in Goguen's case has restricted the scope of the statute to intentional contempt.<sup>26</sup> Aside from the problems presented by an appellate court's limiting construction in the very case in which a defendant has been tried under a previously unmarrowed statute,<sup>27</sup> this holding still does not clarify what conduct constitutes contempt, whether intentional or inadvertent.

Finally, appellant argues that state law enforcement authorities have shown themselves ready to interpret this penal statute narrowly and that the statute, properly read, reaches only direct, immediate contemptuous acts that "actually impinge upon the physical integrity of the flag . . ."<sup>28</sup> There is no support in the record for the former point.<sup>29</sup> Similarly, nothing in the state court's

<sup>21</sup> Appellant's Brief 17; Trans. of Oral Arg. 9.

<sup>22</sup> Tr. of Oral Arg. 9.

<sup>23</sup> *Ibid.*

<sup>24</sup> At the time of Goguen's prosecution, the statute referred simply to "the flag of the United States . . ." without further definition. That raises the obvious question, whether Goguen's miniature cloth flag constituted "the flag of the United States . . ." Goguen argued unsuccessfully before the state courts that the statute applied only to flags that met "official standards" for proportions, such as relation of height to width and the size of stripes and the field of stars, and that the cloth he wore did not meet those standards. Tr. of Oral Arg. 11-12, 24-26; Appendix 2. There was no dispute that Goguen's movement had the requisite number of stars and stripes and colors. Tr. of Oral Arg. 11-12. The Massachusetts Supreme Judicial Court found Goguen's cloth flag to be covered by the statute, noting that "the statute does not require that the flag be 'official.'" *Commonwealth v. Goguen*, — Mass. —, —, 279 N. E. 2d 666, 668 (1972). The lower federal courts did not address this holding, nor do we. We note only that the Massachusetts Legislature apparently sensed an ambiguity in this respect, because subsequent to Goguen's prosecution it amended the statute in an effort to define what it had meant by the "flag of the United States." See n. 8, *supra*.

<sup>25</sup> Tr. of Oral Arg. 18.

<sup>26</sup> The Massachusetts court commented simply that "if the jury could infer that the violation was intentional without reviewing any words of the defendant." *Commonwealth v. Goguen*, — Mass. —, —, 279 N. E. 2d 666, 668 (1972). Thus, the court held that the jury could infer intent merely from Goguen's conduct. This is apparently also a holding that the jury must find contemptuous intent under the statute, although the requirement amounts to very little since it is so easily satisfied. The court's reference to verbal communication reflected Goguen's reliance on *Street v. New York*, 394 U.S. 575 (1969).

<sup>27</sup> *Id.*, 394 U.S. 575, 195, 198 (1969).

<sup>28</sup> Appellant's Brief 22.

<sup>29</sup> With regard to prosecutorial policies, appellant cites two published opinions of the Massachusetts Attorney General, 4 Ops. of Att. Gen. 470 (1915) (reproduced at Appellant's Brief 20); Report of Att. Gen., Pub. Doc. No. 12, p. 192 (1968) (reproduced at Juris. Statement App. 53). Appellant concedes that neither deals with the contempt portion of the statute under which Goguen was convicted. Thus, they are not in point here. They provided guidance to no one on the relevant statutory language. Nevertheless, appellant is correct that they show a tendency on the part of the state Attorney General to read other portions of the statute narrowly. At the same time, they reflect the lack of precision recurring through the Massachusetts flag misuse statute. The 1915 opinion noted that a literal reading of one portion of the statute, prohibiting exhibition of emblems of the flag on certain articles, would make it a criminal offense to display the flag itself "in many of its cheaper and more common forms." Appellant's Brief 21-22. The state Attorney General concluded that this would be a "manifest absurdity." *Id.*, at 22. The 1968 opinion advised that a flag representation painted on a door was not "a flag of the United States" within the meaning of the statute. Juris. Statement App. 53-55. A contrary interpretation would "raise serious questions under the First and Fourteenth Amendments . . ." given the requirement that behavior made criminal must be "plainly prohibited by the language of the statute." *Id.*, at 54.



opinion in this case or in any earlier opinion of that court sustains the latter. In any event, Goguen was charged only under the wholly open-ended language of publicly treating the flag "contemptuously." There was no allegation of physical desecration.

There are areas of human conduct where, by the nature of the problems presented, legislatures simply cannot establish standards with great precision. Control of the broad range of disorderly conduct that may inhibit a policeman in the performance of his official duties may be one such area, requiring as it does an on-the-spot assessment of the need to keep order. Cf. *Colton v. Kentucky*, 407 U.S. 104 (1972). But there is no comparable reason for committing broad discretion to law enforcement officials in the area of flag contempt. Indeed, because display of the flag is so common and takes so many forms, changing from one generation to another and often difficult to distinguish in principle, a legislature should define with some care the flag behavior it intends to outlaw. Certainly nothing prevents a legislature from defining with substantial specificity what constitutes forbidden treatment of United States flags.<sup>2</sup> The statutory language at issue here fails to approach that goal and is void for vagueness.<sup>3</sup> That judgment is affirmed.<sup>4</sup>

*It is so ordered.*

Supreme Court of the United States

No. 72-1254

JOSEPH SMITH, SHERIFF OF WORCESTER COUNTY, APPELLANT, v. VALARIE GOGUEN.

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT.

[March 25, 1974]

MR. JUSTICE WHITE, concurring in the judgment.

It is a crime in Massachusetts if one mutilates, tramples, defaces or "treats contemptuously" the flag of the United States. Respondent Goguen was convicted of treating the flag contemptuously, the evidence being that he wore a likeness of the flag on the seat of his pants. The Court holds this portion of the statute too vague to provide an ascertainable standard of guilt in any situation.

<sup>2</sup> The federal flag desecration statute, for example, reflects a congressional purpose to do just that. In response to a warning by the United States Attorney General that to use such unbounded terms as "denies" or "casts contempt . . . either by word or act" is "to risk invalidation" on vagueness grounds, S. Rep. No. 1287, 90th Cong., 2d Sess. 5 (1968); H. R. Rep. No. 350, 90th Cong., 1st Sess., 7 (1967), the bill which became the federal statute was amended, 113 Cong. Rec. 16449, 16450 (1967), to reach only acts that physically damage the flag. The desecration provision of the statute, 18 U.S.C. § 700(c), declares:

"(a) Whoever knowingly casts contempt upon any flag of the United States by publicly mutilating, defacing, defiling, burning, or trampling upon it shall be fined not more than \$1,000 or imprisoned for not more than one year, or both."

The legislative history reveals a clear desire to reach only defined physical acts of desecration. H. R. Rep. No. 350, *supra*, at 3 ("The language of the bill prohibits intentional, willful, not accidental or inadvertent public physical acts of desecration."); S. Rep. No. 1287, *supra*, at 3 ("The language of the bill prohibits intentional, willful, not accidental or inadvertent public physical acts of desecration of the flag."). The act has been so read by the lower federal courts, which have upheld it against vagueness challenges. *United States v. Croxson*, 462 F. 2d 96 (CA9) cert. denied, 409 U.S. 1044 (1972); *Jouce v. United States*, — U.S. App. D.C. —, 454 F. 2d 971 (1971), cert. denied, 405 U.S. 969 (1972). See *Hoffman v. United States*, — U.S. App. D.C. —, 445 F. 2d 226 (1971).

<sup>3</sup> We are aware, of course, of the universal adoption of flag desecration or contempt statutes by the federal and state governments. See n. 30, *supra*. The statutes of the 50 States are synopsized in Hearings on H. R. 271, *et al.*, before Sub. Comm. No. 4 of the House Comm. on the Judiciary, 90th Cong., 1st Sess., ser. 4, pt. III, at 324-346 (1967). Most of the state statutes are patterned after the Uniform Flag Act of 1917, which in § 3 provides that:

"No person shall publicly mutilate, deface, defile, defy, trample upon, or by word or act cast contempt upon any such flag, standard, color, ensign or shield."

Compare 9B Uniform Laws Annotated 52-53 (1966), with Hearings on H. R. 271, *et al.*, *supra*, at 321-346. Because it is stated in the disjunctive, this language, like that before us, makes possible criminal prosecution solely for casting contempt upon the flag. But the validity of statutes utilizing this language, insofar as the vagueness doctrine is concerned, will depend as much on their judicial construction and enforcement history as their literal terms.

<sup>4</sup> We have not addressed Goguen's First Amendment arguments because, having found the challenged statutory language void for vagueness, there is no need to decide additional issues. Moreover, the skeletal record in this case, see n. 1, *supra*, affords a poor opportunity for the careful consideration merited by the importance of the First Amendment issues Goguen has raised.

including this one. Although I concur in the judgment of affirmance for other reasons, I cannot agree with this rationale.<sup>1</sup>

## I

It is self-evident that there is a whole range of conduct that anyone with at least semblance of common sense would know is contemptuous conduct and that would be covered by the statute if directed at the flag. In these instances, there would be ample notice to the actor and no room for undue discretion in enforcement officers. There may be a variety of other conduct that might or might not be claimed contemptuous by the State, but unpredictably in those situations does not change the certainty in others.

I am also confident that the statute was not vague with respect to the conduct for which Goguen was arrested and convicted. It should not be beyond the reasonable comprehension of anyone who would conform his conduct to the law to realize that sewing a flag on the seat of his pants is contemptuous of the flag. The Supreme Judicial Court of Massachusetts, in affirming the conviction, stated that the "jury could infer that the violation was intentional . . ." If he thus intended the very act which the statute forbids, Goguen can hardly complain that he did not realize his acts were in violation of the statute. "[T]he requirements of a specific intent to do a prohibited act may avoid those consequences to the accused which may otherwise render a vague or indefinite statute invalid . . ." [W]here the punishment imposed is only for an act knowingly done with the purpose of doing that which the statute prohibits, the accused cannot be said to suffer from lack of warning or knowledge that the act which he does is a violation of law." *Scrivens v. United States*, 325 U. S. 91, 101-102 (1945).

If it be argued that the statute in this case merely requires an intentional act, not a willful one in the sense of intending what the statute forbids, then it must be recalled that respondent's major argument is that wearing a flag patch on his trousers was conduct that "clearly expressed an idea, albeit unpopular or unpatriotic, about the flag or about the country it symbolizes . . ." Goguen may have meant to show that he believed that America was a fit place only to sit on, or the proximity to that portion of his anatomy might have had more vulgar connotations. Nonetheless, the strong and forceful communication of ideas is unmistakable." Appendix 13. Goguen was under no misapprehension as to what he was doing and as to whether he was showing contempt for the flag of the United States. As he acknowledges in his brief here, ". . . it was necessary for the jury to find that appellee conveyed a contemptuous attitude in order to convict him." I cannot, therefore, agree that the Massachusetts statute is vague as to Goguen; and if not vague as to his conduct, it is irrelevant that it may be vague in other contexts with respect to other conduct. "In determining the sufficiency of the notice a statute must of necessity be examined in the light of the conduct with which a defendant is charged." *United States v. National Dairy Products Corp.*, 372 U.S. 29, 33 (1963). Statutes are not invalidated as vague simply because difficulty is found in determining whether marginal offenses fall within their language." *Id.*, at 32.

<sup>1</sup> There has been recurring litigation with diverse results over the validity of flag use and flag decoration statutes. Representative of the federal and state cases are the following: *Thoms v. Heffernan*, 473 F. 2d 478 (CA2 1973); *Lone Island Vietnam Waratorium Committee v. Cohn*, 427 F. 2d 344 (CA2 1970); *United States v. Croason*, 462 F. 2d 96 (CA9), cert. denied, 409 U.S. 1064 (1972); *Joyce v. United States*, 147 U.S. App. D.C. 128, 454 F. 2d 971 (1971), cert. denied, 405 U.S. 969 (1972); *Deeds v. Feto*, 353 F. Supp. 840 (ND Tex. 1972); *Oldroyd v. Kugler*, 297 F. Supp. 176 (N.J. 1970), rev'd, 461 F. 2d 535 (CA2 1972), abstention on remand, 352 F. Supp. 27, aff'd, 412 U.S. 924 (1973); *Sutherland v. DeTull*, 323 F. Supp. 740 (SD Ill. 1971); *Barber v. Morgan*, 292 F. Supp. 585 (WD N.C. 1971); *Croason v. Silver*, 319 F. Supp. 1084 (Ariz. 1970); *Hodsdon v. Buckham*, 310 F. Supp. 598 (Del. 1970), rev'd on other grounds sub nom. *Hodsdon v. Stahler*, 444 F. 2d 522 (CA2 1971); *United States v. Penavson*, 269 F. Supp. 1111 (ND Cal. 1969); *State v. Royal*, 505 A. 2d 676 (1973); *State v. Zimmerman*, 29 N.J. 270, 201 A. 2d 199 (1972); *State v. Science*, 81 Wash. 2d 753, 506 P. 2d 992, prob. juris. noted, 414 U.S. 815 (1973) (sub judice); *City of Miami v. Waltenberger*, 265 So. 2d 722 (Fla. 1972), Ct. App. 1972; *State v. Mitchell*, 32 Ohio App. 2d 16, 988 N.E. 2d 246 (1972); *State v. Fisher*, 22 Ohio App. 2d 217, 201 N.E. 2d 498 (1971); *State v. Van Cinn*, 8 Conn. Cir. 609, 251 A. 2d 584 (1971); *State v. Waterman*, 190 N.Y. 2d 509 (Howe Sup. Ct. 1971); *State v. Sault*, 99 Ohio Misc. 27, 277 N.E. 2d 580 (1971); *Deeds v. State*, 374 S.W. 2d 718 (Crim. App. Tex. 1971); *Peante v. Radich*, 26 N.Y. 2d 114, 208 N.Y.S. 2d 816, 257 N.E. 2d 20 (1970), aff'd by an equally divided court, 401 U.S. 521, sub. denied, 409 U.S. 989 (1971); *Peante v. Cowell*, 274 Cal. App. 2d 927, 78 Cal. Rptr. 857 (1969), appeal dismissed, 396 U.S. 371 (1970); *Hinton v. State*, 292 Ga. 174, 154 S.E. 2d 246 (1967), rev'd on other grounds sub nom. *Anderson v. Georgia*, 320 U.S. 206 (1963).

The unavoidable inquiry, therefore, becomes whether the "treats contemptuously" provision of the statute, as applied in this case, is unconstitutional under the First Amendment. That amendment, of course, applies to speech and not to conduct without substantial communicative intent and impact. Even though particular conduct may be expressive and is understood to be of this nature, it may be prohibited if necessary to further a nonspeech interest of the Government that is within the power of the Government to implement. *United States v. O'Brien*, 391 U.S. 367 (1968).

There is no doubt in my mind that it is well within the powers of Congress to adopt and prescribe a national flag and to protect the integrity of that flag. Congress may provide for the general welfare, control interstate commerce, provide for the common defense and exercise any powers necessary and proper for those ends. These powers, and the inherent attributes of sovereignty as well, surely encompass the designation and protection of a flag. It would be foolishness to suggest that the men who wrote the Constitution thought they were violating it when they specified a flag for the new Nation, Act of January 13, 1774, 1 Stat. 341, c. 1, just as they had for the Union under the Articles of Confederation, 8 Journal of the Continental Congress 464 (June 14, 1777). It is a fact of history that flags have been associated with nations and with government at all levels, as well as with tribes and families. It is also an historical fact that flags, including ours, have played an important and useful role in human affairs. One need not explain fully a phenomenon to recognize its existence and in this case to concede that the flag is an important symbol of nationhood and unity, created by the nation and endowed with certain attributes. Conceived in this light, I have no doubt about the validity of laws designating and describing the flag and regulating its use, display and disposition. The United States has created its own flag, as it may. The flag is a national property, and the Nation may regulate those who would make, imitate, sell, possess or use it.

I would not question those statutes which proscribe mutilation, defacement or burning of the flag or which otherwise protect its physical integrity, without regard to whether such conduct might provoke violence. Neither would I find it beyond congressional power, or that of state legislatures, to forbid attaching to or putting on the flag any words, symbols or advertisements.<sup>2</sup> All of those objects, whatever their nature, are foreign to the flag, change its physical character, and interfere with its design and function. There would seem to be little question about the power of Congress to forbid the mutilation of the Lincoln Memorial or to prevent overlaying it with words or other objects. The flag is itself a monument, subject to similar protection.

## II

I would affirm Goguen's conviction, therefore, had he been convicted for mutilating, trampling upon or defacing the flag, or for using the flag as a billboard for commercial advertisements or other displays. The Massachusetts statute, however, does not stop with proscriptions against defacement or attaching foreign objects to the flag. It also makes it a crime if one "treats contemptuously" the flag of the United States, and Goguen was convicted under this part of the statute. To violate the statute in this respect, it is not enough that one "treat" the flag; he must also treat it "contemptuously," which, in ordinary understanding, is the expression of contempt for the flag. In the case before us, as has been noted, the jury must have found that Goguen not only wore the flag on the seat of his pants but also that the act—and hence Goguen himself—was contemptuous of the flag. To convict on this basis is to convict not to protect the physical integrity or to protect against acts interfering with the proper use of the flag, but to punish for communicating ideas about the flag unacceptable to the controlling majority in the legislature.<sup>3</sup>

<sup>2</sup> For a treatment of statutes protective of the flag, see Rosenblatt, *Flag Desecration: History and Analysis*, 1972 Wash. U. L. Q. 193.

<sup>3</sup> Massachusetts has not construed its statute to eliminate the communicative aspect of the proscribed conduct as a crucial element of the violation. In *State v. Royal*, — N.H. —, 305 A. 2d 676 (1973), the New Hampshire Supreme Court, noting among other things, that the State has a valid interest in the physical integrity of the flag, rejected a facial attack on its Flag Desecration Statute, which made it a crime to publicly mutilate, trample upon, defile, deface, or cast contempt upon the flag. The court construed its statute to be "directed at acts upon the flag and not at the expression of and mere belief in particular ideas." *Id.*, at 680. The proscription against casting contempt upon

Neither the United States nor any State may require any individual to salute or express favorable attitudes towards the flag. *West Virginia State Board of Education v. Barnette*, 319 U.S. 624 (1943). It is also clear under our cases that disrespectful or contemptuous spoken or written words about the flag may not be punished consistently with the First Amendment. *Street v. New York*, 334 U.S. 576 (1969). Although neither written nor spoken, an act may be sufficiently communicative to invoke the protection of the First Amendment. *Tinker v. Des Moines Independent Community School District*, 233 U.S. 503 (1969), and may not be forbidden by law except incidental to preventing unprotected conduct or unless the communication is itself among those that fails outside the protection of the First Amendment. In *O'Brien*, the Court sustained a conviction for draft card burning, although admittedly the burning was itself expressive. There, destruction of draft cards, whether communicative or not, was found to be inimical to important governmental considerations. But the Court made clear that if the concern of the law was with the expression associated with the act, the result would be otherwise:

"The case at bar is therefore unlike one where the alleged governmental interest in regulating conduct arises in some measure because the communication allegedly integral to the conduct is itself thought to be harmful. In *Stromberg v. California*, 283 U.S. 359 (1931), for example, this Court struck down a statutory phrase which punished people who expressed their 'opposition to organized government' by displaying 'any flag, badge, banner, or device.' Since the statute there was aimed at suppressing communication it could not be sustained as a regulation of noncommunicative conduct." 391 U.S. 367, 382 (1968).

It would be difficult, therefore, to believe that the conviction in *O'Brien* would have been sustained had the statute proscribed only contemptuous burning of draft cards.

Any conviction under the "treats contemptuously" provision of the Massachusetts statute would suffer from the same infirmity. This is true of Goguen's conviction. And if it be said that the conviction does not violate the First and Fourteenth Amendments because Goguen communicated nothing at all by his conduct and did not intend to do so, there would then be no evidentiary basis whatsoever for convicting him of being "contemptuous" of the flag. I concur in the Court's judgment.

#### Supreme Court of the United States

No. 72-1254

JOSEPH SMITH, SHERIFF OF WORCESTER COUNTY, APPELLANT, v. VALARIE GOGUEN.

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT.

[March 25, 1974]

MR. JUSTICE BLACKMUN, with whom THE CHIEF JUSTICE joins, dissenting.

I agree with MR. JUSTICE WHITE in his conclusion that the Massachusetts flag statute is not unconstitutionally vague. I disagree with his conclusion, and with that of the Court, that the words "treats contemptuously" are necessarily directed at protected speech and that Goguen's conviction for his immature antic therefore cannot withstand constitutional challenge.

I agree with MR. JUSTICE REHNQUIST when he concludes that the First Amendment affords no shield to Goguen's conduct. I reach that result, how-

the flag was to be understood as a general prohibition of acts of the same nature as the previously forbidden acts of mutilation and defacement, not as a proscription of the expression of ideas. Thus:

"Our statute is more narrowly drawn than some flag statutes. It deals only with the flag itself or any 'flag or ensign' evidently purporting to be the flag. *State v. Cline*, N.H., 305 A. 2d 672, decided this date. Also, as we construe it, our statute prohibits only acts of mutilation and defilement inflicted directly upon the flag itself and does not prohibit acts which are directed at the flag without touching it. The statute enumerates specific acts of flag desecration, namely 'mutilate, trample upon, defile, deface,' all of which involve physical acts upon the flag. The general term 'cast contempt' follows the enumerated specific acts. We hold that the phrase 'or cast contempt by . . . acts' as used in RSA 573:4 is limited to physical abuse type of acts similar to those previously enumerated in the state. 2 Sutherland, Statutory Construction §4909 (2d rev. ed. Harack 1943); *State v. Small*, 99 N.H. 249, 111 A. 2d 201 (1955); *State v. N.H. Gas & Electric Co.*, 86 N.H. 16, 163 A. 724 (1932)." *Id.*, at 679.



ever, not on the ground that the Supreme Judicial Court of Massachusetts "would read" the language of the Massachusetts statute to require that "treats contemptuously" entails physical contact with the flag and the protection of its physical integrity, but on the ground that that court, by its unanimous rescript opinion, has in fact already done exactly that. The court's opinion states that Goguen "was not prosecuted for being 'intellectually . . . diverse' or for 'speech,' as in *Street v. New York*, 394 U.S. 576, 593-594 . . ." Having rejected the vagueness challenge and concluded that Goguen was not punished for speech, the Massachusetts court, in upholding the conviction, has necessarily limited the scope of the statute to protecting the physical integrity of the flag. The requisite for "treating contemptuously" was found and the court concluded that punishment was not for speech—a communicative element. I, therefore, must conclude that Goguen's punishment was constitutionally permissible for harming the physical integrity of the flag by wearing it affixed to the seat of his pants. I accept the Massachusetts court's opinion at what I regard to be its face value.

Supreme Court of the United States

No. 72-1254

JOSEPH SMITH, SHERIFF OF WORCESTER COUNTY, APPELLANT, v. VALARIE GOGUEN.

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT.

[March 25, 1974]

MR. JUSTICE REHNQUIST, with whom THE CHIEF JUSTICE joins, dissenting. I agree with the concurring opinion of my Brother WHITE insofar as he concludes that the Massachusetts law is not unconstitutionally vague, but I do not agree with him that the law under which respondent Goguen was convicted violates the First and Fourteenth Amendments. The issue of the application of the First Amendment to expressive conduct, or "symbolic speech," is undoubtedly a difficult one, and in cases dealing with the United States flag it has unfortunately been expounded only in dissents and concurrences. See *Street v. New York*, 394 U.S. 576, Warren, C. J., dissenting, *id.*, at 594; Black, J., dissenting, *id.*, at 609; WHITE, J., dissenting, *id.*, at 610; Fortas, J., dissenting, *id.*, at 615; and *Congill v. California*, 396 U.S. 371 (1970) Harlan, J., concurring, *ibid.* Nonetheless, since I disagree with the Court's conclusion that the statute is unconstitutionally vague, I must, unlike the Court, address petitioner's First Amendment contentions.

The question whether the State may regulate the display of the flag in the circumstances shown by this record appears to be an open one under our decisions. *Haller v. Nebraska*, 265 U.S. 34 (1907); *Street v. New York*, 394 U.S. 576 (1969); *Congill v. California*, 396 U.S. 371 (1970). Harlan, J., concurring; *People v. Radich*, 26 N.Y. 2d 114, 257 N.E. 2d 30, *aff'd* by an equally divided Court, 401 U.S. 531 (1971).

What the Court rightly describes as "the slender record in this case," *ante*, p. 1, shows only that Goguen wore a small cloth version of the United States flag sewn to the seat of his blue jeans. When the first police officer questioned him, he was standing with a group of people on Main Street in Leominster, Massachusetts. The people with him were laughing. When the second police officer saw him, he was "walking in the downtown business district in Leominster, wearing a short coat, casual type pants and a miniature American flag sewn on the left side of his pants." Goguen did not testify, and there is nothing in the record before us to indicate what he was attempting to communicate by his conduct, or, indeed, whether he was attempting to communicate anything at all. The record before us does not even conclusively reveal whether Goguen sewed the flag on the pants himself, or whether the pants were manufactured complete with flag; his counsel here, however, who was also his trial counsel, stated in oral argument that of his own knowledge the pants were not manufactured with the flag on them. Finally, it does not appear whether appellee said anything during his journey through the streets of Leominster; his amended bill of exceptions to the Supreme Judicial Court of Massachusetts made no mention of any testimony indicating that he spoke at all.

Goguen was prosecuted under the Massachusetts statute set forth in the opinion of the Court, and has asserted here not only a claim of unconstitutionality

vagueness but a claim that the statute infringes his right under the First and Fourteenth Amendments.

# I

There is a good deal of doubt on this record that Goguen was trying to communicate any particular idea, and had he been convicted under a statute which simply prohibited improper display of the flag I would be satisfied to conclude that his conduct in wearing the flag on the seat of his pants did not come within even the outermost limits of that sort of "expressive conduct" or "symbolic speech" which is entitled to any First Amendment protection. But Goguen was convicted of treating the flag contemptuously by the act of wearing it where he did, and I have difficulty seeing how Goguen could be found by a jury to have treated the flag contemptuously by his act and still not to have expressed any idea at all. There are, therefore, in my opinion, at least marginal elements of "symbolic speech" in Goguen's conduct as reflected by this record.

Many cases which could be said to involve conduct no less expressive than Goguen's, however, have never been thought to require analysis in First Amendment terms because of the presence of other factors. One who burns down the factory of a company whose products he dislikes can expect his First Amendment defense to a consequent arson prosecution to be given short shrift by the courts. The arson statute safeguards the government's substantial interest in preventing the destruction of property by means dangerous to human life, and an arsonist's motive is quite irrelevant. The same fate would doubtless await the First Amendment claim of one prosecuted for destruction of government property after he defaced a speed limit sign in order to protest the stated speed limit. Both the arsonist and the defacer of traffic signs have infringed on the property interests of others, whether of another individual or of the government. Yet Goguen, unlike either, has so far as this record shows infringed on the ordinary property rights of no one.

That Goguen owned the flag with which he adorned himself, however, is not dispositive of the First Amendment issue. Just as the government may not escape the reach of the First Amendment by asserting that it acts only in a proprietary capacity with respect to streets and parks to which it has title, *Hague v. CIO*, 307 U.S. 496, 514-516 (1939), a defendant such as Goguen may not escape the reach of the police-power of the State of Massachusetts by asserting that his act affected only his own property. Indeed, there are so many well-established exceptions to the proposition that one may do what he likes with his own property that it cannot be said to have even the status of a general rule.

The very substantial authority of state and local governing bodies to regulate the use of land, and thereby to limit the uses available to the owner of the land, was established nearly a half century ago in *Euclid v. Ambler Realty Co.*, 272 U.S. 365 (1926). Land use regulations in a residential zoning district typically do not merely exclude malodorous and unsightly rendering plants; they often also prohibit erection of buildings or monuments, including ones open to the public, which might itself in an aesthetic sense involve substantial elements of "expressive conduct." The performance of a play may well constitute expressive conduct or "pure" speech, but a landowner may not for that reason insist on the right to construct and operate a theater in an area zoned for noncommercial uses. So long as the zoning laws do not, under the guise of neutrality, actually prohibit the expression of ideas because of their content, they have not been thought open to challenge under the First Amendment.

As may land, so may other kinds of property be subjected to close regulation and control. A person with an ownership interest in controlled drugs, or in firearms, cannot use them, sell them, and transfer them in whatever manner he pleases. The copyright laws, 17 U.S.C. § 1 *et seq.*, limit what use the purchaser of a copyrighted book may make of his acquisition. A company may be restricted in what it advertises on its billboards, *Packer Corp. v. Utah*, 285 U.S. 105 (1932).

The statute which Goguen violated, however, does not purport to protect the related interests of other property owners, neighbors, or indeed any competing ownership interest in the same property; the interest which it protects is that of the Government, and is not a traditional property interest.

Even in this, however, laws regulating use of the flag are by no means unique. A number of examples can be found of statutes enacted by Congress

which protect only a peculiarly governmental interest in property otherwise privately owned. 18 U.S.C. § 504 prohibits the printing or publishing in actual size or in actual color of any United States postage or revenue stamp, or of any obligation or security of the United States. It likewise prohibits the importation of any plates for the purpose of such imprinting. 18 U.S.C. § 331 prohibits the alteration of any Federal Reserve note or national bank note, and 18 U.S.C. § 702 prohibits the wearing of a military uniform, any part of such uniform, or anything similar to a military uniform or part thereof without proper authorization. 18 U.S.C. § 704 prohibits the unauthorized wearing of service medals. It is not without significance that many of these statutes, though long on the books, have never been judicially construed or even challenged.

My Brother WHITE says, however, that whatever may be said of neutral statutes, simply designed to protect a governmental interest in private property, which in the case of the flag may be characterized as an interest in preserving its physical integrity, the Massachusetts statute here is not neutral. It punishes only those who treat the flag contemptuously, imposing no penalty on those who "treat" it otherwise, that is, those who impair its physical integrity in some other way.

## II

Leaving aside for the moment the nature of the governmental interest in protecting the physical integrity of the flag, I cannot accept the conclusion that the Massachusetts statute must be invalidated for punishing only some conduct that impairs the flag's physical integrity. It is true, as the Court observes, that we do not have in so many words a "narrowing construction" of the statute from the Supreme Judicial Court of Massachusetts. But the first of this Court's decisions cited in the short rescript opinion of the Supreme Judicial Court is *Halter v. Nebraska*, 205 U.S. 34 (1907), which upheld against constitutional attack a Nebraska statute which forbade the use of the United States flag for purposes of advertising. We also have the benefit of an opinion of the Attorney General of the Commonwealth of Massachusetts that the statute under which Goguen was prosecuted, being penal, "is not to be enlarged beyond its plain import, and as a general rule is strictly construed." Rep. A-G Pub. Doc. No. 42 (1968) 192-193. With this guidance, and the further assistance of the content of the entire statutory prohibition, I think the Supreme Judicial Court would read the language "whoever publicly mutilates, tramples upon, defaces, treats contemptuously a flag of the United States . . ." as carrying the clear implication that the contemptuous treatment, like mutilation, trampling upon, or defacing, must involve some actual physical contact with the flag itself. Such a reading would exclude a merely derogatory gesture performed at a distance from the flag, as well as purely verbal disparagement of it.<sup>1</sup>

If the statute is thus limited to acts which affect the physical integrity of the flag, the question remains whether the State has sought only to punish those who impair the flag's physical integrity for the purpose of disparaging it as a symbol, while permitting impairment of its physical integrity by those who do not seek to disparage it as a symbol. If that were the case, holdings like *Schacht v. United States*, 398 U.S. 58 (1970), suggest that such a law would abridge the right of free expression.

But Massachusetts notes out punishment to anyone who publicly mutilates, tramples, or defaces the flag, regardless of his motive or purpose. It also punishes the display of any "words, figures, advertisements or designs" on the flag, or the use of a flag in a parade as a receptacle for depositing or collecting money. Likewise prohibited is the offering or selling of any article on which is engraved a representation of the United States flag.

The variety of these prohibitions demonstrates that Massachusetts has not merely prohibited impairment of the physical integrity of the flag by those who would cast contempt upon it, but equally by those who would seek to take advantage of its favorable image in order to facilitate any commercial purpose, or those who would seek to convey any message at all by means of imprinting

<sup>1</sup> To the extent that counsel for petitioner who argued the cause in the Court of Appeals may have intimated a broader construction in the colloquy in that court in this Court's opinion *ante*, p. 9, I would attach little weight to it. We have previously said that we are "loath to attach conclusive weight to the relatively spontaneous responses of counsel to equally spontaneous questioning from the Court during oral argument." *Moore v. United States*, 407 U.S. 163, 170, and if that be the case surely even less weight should be ascribed by us to a colloquy which took place in another court.

words or designs on the flag. These prohibitions are broad enough that it can be fairly said that the Massachusetts statute is one essentially designed to preserve the physical integrity of the flag, and not merely to punish those who would infringe that integrity for the purpose of disparaging the flag as a symbol. While it is true that the statute does not appear to cover one who simply wears a flag, unless his conduct for other reasons falls within its prohibitions, the legislature is not required to address every related matter in an area with one statute. *Kutzbach v. Morgan*, 354 U.S. 641, 650-658 (1966). It may well be that the incidence of such conduct at the time the statute was enacted was not thought to warrant legislation in order to preserve the physical integrity of the flag.

In *United States v. O'Brien*, 391 U.S. 367 (1968), the Court observed:

"We cannot accept the view that apparently limitless variety of conduct can be labeled 'speech' whenever the person engaging in the conduct intends thereby to express an idea." 391 U.S., at 376.

Then, proceeding "on the assumption that the alleged communicative element in O'Brien's conduct was sufficient to bring into play the First Amendment," the Court held that a regulation of conduct was sufficiently justified

"if it is within the constitutional power of the Government; if it furthers an important or substantial governmental interest; if the governmental interest is unrelated to the suppression of free expression; and if the incidental restriction on alleged First Amendment freedoms is no greater than is essential to the furtherance of that interest." 391 U.S., at 377.

While I have some doubt that the first enunciation of a group of tests such as those established in *O'Brien* sets them in concrete for all time, it does seem to me that the Massachusetts statute substantially complies with those tests. There can be no question that a statute such as the Massachusetts one here is "within" the constitutional power of a State to enact. Since the statute by this reading punishes a variety of uses of the flag which would impair its physical integrity, without regard to presence or character of expressive conduct in connection with those uses, I think the governmental interest is unrelated to the suppression of free expression. The question of whether the governmental interest is "substantial" is not easy to sever from the question of whether the restriction is "no greater than is essential to the furtherance of the interest;" and I therefore treat those two aspects of the matter together. I believe that both of these tests are met, and that the governmental interest is sufficient to outweigh whatever collateral suppression of expressive conduct was involved in the actions of Goguen. In so concluding, I find myself in agreement not only with my Brother WHITE in this case, but with those members of the Court referred to earlier in this opinion who dissented from the Court's disposition in the case of *Street v. New York*, *supra*.

My Brother WHITE alludes to the early legislation of both the Continental Congress and of the Congress of the new nation dealing with the flags, and observes: "One need not explain fully a phenomenon to recognize its existence and in this case to concede that the flag is an important symbol of nationhood and unity, created by the nation and endowed with certain attributes. Conceived in this light, I have no doubt about the validity of laws designating and describing the flag and regulating its use, display and disposition." I agree.

On September 17, 1787, as the last members of the Constitutional Convention were signing the instrument, James Madison in his "Notes" describes the occurrence of the following incident:

"Whilst the last members were signing it Doctor Franklin looking towards the President's Chair, at the back of which a rising sun happened to be painted, observed to a few members near him, that Painters had found it difficult to distinguish in their art a rising from a setting sun. I have said he, often and often in the course of the Session, and the vicissitudes of my hopes and fears as to its issue, looked at that behind the President without being able to tell whether it was rising or setting: But now at length I have the happiness to know that it is a rising and not a setting sun." Writings of James Madison, Vol. 4, pp. 482-483. (G. P. Putnam's Sons 1903).

Writing for this Court more than one hundred years later, Mr. Justice Holmes made the familiar statement:

"... [W]hen we are dealing with words that also are a constituent act, like the Constitution of the United States, we must realize that they



have called into life a being the development of which could not have been foreseen completely by the most gifted of its begetters. It was enough for them to realize that the hope that they had created an organism; it has taken a century and has caused their successors much sweat and blood to prove that they created a nation. The case before us must be considered in the light of our whole experience and not merely in that of what was said a hundred years ago." *Missouri v. Holland*, 252 U.S. 416, 433 (1920).

From its earliest days, the art and literature of our country have assigned a special place to the flag of the United States. It figures prominently in at least one of Charles Wilson Peal's portraits of George Washington, showing him as leader of the forces of the 13 colonies during the Revolutionary War. No one who lived through the Second World War in this country can forget the impact of the photographs of the members of the United States Marine Corps raising the United States flag on the top of Mount Suribachi on the Island of Iwo Jima, which is now commemorated in a statue at the Iwo Jima Memorial adjoining Arlington National Cemetery.

Ralph Waldo Emerson, writing 50 years after the battles of Lexington and Concord, wrote:

"By the rude bridge that arched the flood  
Their flag to April's breeze unfurled  
Here once the embattled farmers stood  
And fired the shot heard 'round the world."

Oliver Wendell Holmes, Senior, celebrated the flag that had flown on "Old Ironsides" during the War of 1812, and John Greenleaf Whittier made Barbara Fritchie's devotion to the "silken scarf" in the teeth of Stonewall Jackson's ominous threats the central theme of his familiar poem. John Philip Sousa's "Stars and Stripes Forever" and George M. Cohan's "It's a Grand Old Flag" are musical celebrations of the flag familiar to adults and children alike. Francis Scott Key's "Star Spangled Banner" is the country's national anthem.

While most of the artistic evocations of the flag occur in the context of times of national struggle, and correspondingly greater dependence on the flag as a symbol of national unity, the importance of the flag is by no means limited to the field of hostilities. The United States flag flies over every federal courthouse in our Nation, and is prominently displayed in almost every federal, state, or local public building throughout the land. It is the one visible embodiment of the authority of the National Government, through which the laws of the Nation and the guarantees of the Constitution are enforced.

It is not empty rhetoric to say that the United States Constitution, even the First and Fourteenth Amendments under which Goguen seeks to upset his conviction, does not invariably in the world of practical affairs enforce itself. Going back no further than the memories of most of us presently alive, the United States flag was carried by federal troops summoned by the President to enforce decrees of federal courts in Little Rock, Arkansas, in 1957, and in Oxford, Mississippi, in 1962.

The significance of the flag, and the deep emotional feelings it arouses in a large part of our citizenry, cannot be fully expressed in the two dimensions of a lawyer's brief or of a judicial opinion. But if the government may create private proprietary interests in written work and in musical and theatrical performances by virtue of copyright laws, I see no reason why it may not, for all of the reasons mentioned, create a similar governmental interest in the flag by prohibiting even those who have purchased the physical object from impairing its physical integrity. For what they have purchased is not merely cloth dyed red, white, and blue, but also the one visible manifestation of two hundred years of nationhood—a history compiled by generations of our forebears and contributed to by streams of immigrants from the four corners of the globe, which has travelled a course since the time of this country's origin that could not have been "foreseen by the most gifted of its begetters."

The permissible scope of government regulation of this unique physical object cannot be adequately dealt with in terms of the law of private property or by a highly abstract, scholastic interpretation of the First Amendment. Massachusetts has not prohibited Goguen from wearing a sign sewn to the seat of his pants expressing in words his low opinion of the flag, of the country, or anything else. It has prohibited him from wearing there a particular symbol of extraordinary significance and content, for which significance and content Goguen is in no wise responsible. The flag of the United States is not another "thing," and it is not just another "idea"; it is not primarily an idea at all.

Here Goguen was, so far as this record appears, quite free to express verbally whatever views it was he was seeking to express by wearing a flag sewn to his pants, on the streets of Leominster or in any of its parks or commons where free speech and assembly was customarily permitted. He was not compelled in any way to salute the flag, pledge allegiance to it, or make any affirmative gesture of support or respect for it such as would contravene *West Virginia Board of Education v. Barnette*, 319 U. S. (1943). He was simply prohibited from impairing the physical integrity of a unique national symbol which has been given content by generations of his and our forebears, a symbol of which he had purchased a copy. I believe Massachusetts had a right to enact this prohibition.

Senator HRTSKA. As of now, the record will be kept open for another 2-weeks for the addition of any information that anyone may wish to add. A determination will be made as to when the subcommittee will meet for consideration of the text of the bill.

Mr. O'CONNOR. Mr. Chairman, I thank you very much. Would it be possible within that 2 week period to review the record?

Senator HRTSKA. The testimony that you have given?

Mr. O'CONNOR. Yes.

Senator HRTSKA. Indeed.

Mr. O'CONNOR. We appreciate that.

Senator HRTSKA. Get in touch with Mr. Thomas Collins here, and he will make the record available to you. You may make sure of editorial changes or language changes that you wish.

Mr. O'CONNOR. I just have one reaction to your discussion with Mr. Finger on the pin in the lapel. This is offhand, without checking this with my conferees in The American Legion. As you may note, I am wearing an American flag in my lapel over my heart. I think if you use the phrase "preferable to be worn on the left lapel," the use of the word "preferable" is important. If it is worn on the other lapel with respect, or any place with respect and honor, that would be the key point.

I would like to review my remarks with the other officials of The American Legion and those present here, and if we believe it helpful to you or helpful to the auxiliary, we would like to file an additional statement within the period you offer.

Senator HRTSKA. Very well.

If there is nothing further, the subcommittee is adjourned subject to the call of the chair.

[Whereupon, at 11:40 a.m., the subcommittee recessed subject to the call of the chair.]

AMENDING RESOLUTION PERTAINING TO DISPLAY  
AND USE OF THE FLAG OF THE UNITED STATES

MAY 6, 1976.—Ordered to be printed

Mr. HRUSKA, from the Committee on the Judiciary,  
submitted the following

## REPORT

[To accompany S.J. Res. 49]

The Committee on the Judiciary, to which was referred the bill (S.J. Res. 49), to amend the joint resolution entitled "Joint resolution to codify and emphasize existing rules and customs pertaining to the display and use of the flag of the United States of America, having considered the same, reports favorably thereon with amendments and recommends that the bill as amended do pass.

## PURPOSE

The purpose of the bill is to codify in an official code for the use and guidance of civilians and civilian organizations the proper method of using and displaying the flag of the United States of America.

## BACKGROUND

The original flag code was contained in Public Law 623, approved by the Congress on June 22, 1942. This statute was subsequently amended on December 22, 1942, by a "Joint resolution to codify and emphasize existing rules and customs pertaining to the display and use of the flag of the United States of America." On the basis of the resolution, an official code was established for the use and guidance of civilians and civilian organizations not required to comply with regulations promulgated by the executive departments of the United States Government.

More recently, Public Law 90-831 made public mutilation, defacing, burning or trampling upon the U.S. flag with the intent to cast contempt on it a federal offense punishable by up to \$1,000 fine and, or up to one year imprisonment.

Even more importantly, however, was the recognition by the Committee that there now exists throughout the nation considerable confusion as to the proper method for displaying the flag of the United States. During hearings held by the Senate Subcommittee on Federal Charters, Holidays, and Celebrations in June, 1974, considerable testimony was heard which underscored the multitude of interpretations that the flag code has been given by our citizens. It was also apparent to the Subcommittee that some of the long-standing customs and usages of the flag are outdated and in serious need of revision. Other provisions of the flag code seem to require additional clarification and reenphasis. S.J. Res. 49 was drafted to accomplish these revisions and codifications in the existing flag code.

With the celebration of the country's Bicentennial upon us, it is appropriate, and, indeed, timely for the Congress to thoroughly consider, and, in time, pass legislation governing the use of our flag—the honored symbol of our proud nation.

The history of the instant measure finds its roots in the bill S. 340, a bill introduced in the 93rd Congress by Senators Tower and Pell. That bill, to establish a commission to study the usage, customs, and laws relating to the flag of the United States, was introduced along with S. J. Res. 91, introduced by Senator Gurney, which was a bill similar to the subject bill.

Neither bill was acted upon during the 93rd Congress, although hearings were held on them in June 1974. S. J. Res. 49, introduced by Senators Bayh and Thurmond in the 94th Congress, is similar to S. J. Res. 91, but contains a number of changes which were the result of testimony presented during the hearings of 1974 and considered by the subcommittee to have sufficient merit and purpose to be included in the clean bill.

Included in this report by the subcommittee are (1) a section-by-section analysis of the bill, (2) changes in existing law.

#### SECTION-BY-SECTION ANALYSIS

Section 1 of the bill is amended by adding language that permits the display of an all-weather flag for a patriotic effect twenty-four hours a day if properly illuminated during the hours of darkness. This has been technically possible for some time because of advances in outdoor lighting and all-weather materials for flags, but the federal code was never adjusted to permit around-the-clock display of the flag.

Section 2 has been updated to indicate our Nation's holidays, their new names, and other changes in dates, to reflect the special days on which the flag should be displayed.

Language has also been added in sections 2 and 3 which reflect efforts by the committee to update the flag code. No longer is the flag, if displayed on a vehicle, to be "clamped to the radiator cap." It must now be affixed to the right fender.

Subsection (i) of Section 3 has been amended to specifically spell out the display of the flag when displayed otherwise than being flown from a staff. When displayed either horizontally or vertically against a wall the union or blue field should be uppermost and to the observer's left.

Section 3(k) has been amended to indicate the importance of the guarantee of religious freedom by the U.S. Constitution. The new



language of this section affirms that when both the flag of the United States of America and the flag of the church are displayed on staffs, the flag of the United States should hold the position of prominence and the position of honor at the clergyman's right. Any other flag so displayed should be placed on the left of the clergyman or speaker or to the right of the audience. 2

Subsection (m) of Section 3 provides for specific language as to when the flag may be flown at half-staff as a mark of respect to the memory of the deceased. It also states specifically who may order the national flag to fly at half staff—no public official below the office of Governor. It also designates those public officials for whom the flag shall be flown at half-staff and the period of time it is to be flown in that position.

Subsection (o) of Section 3 is a new section which describes the proper display of the flag when suspended across a corridor or a lobby inside a building. If only one entrance, the union of the flag should be to the observer's left upon entering. If more than one entrance, the flag should be suspended vertically with union to the north, when entrances are east to west, or to the east when entrances are to the north and south. If there are entrances in more than two directions, the union should be to the east.

Section 4, subsection (d) is amended to preclude any use of a flag as a costume or athletic uniform has been deleted. It is included, however, as a new subsection (j) and provides further guidance as to the use of a flag patch affixed to the uniform of military personnel, firemen, policemen, and members of patriotic organizations. A lapel flag pin, if worn on clothing, should be worn on the left lapel near the heart.

Sections 5 and 7 are changed by adding language that women should salute by placing the right hand over the heart during the hoisting, lowering or passing of the flag and during the Pledge of Allegiance to the Flag.

Sections 6, 7, and 8 of the bill simply reiterate existing conduct for salute of the flag and authority for the Commander in Chief of the Armed Forces to alter, repeal, or add rules pertaining to the rule or custom of displaying the flag of the United States whenever he deems it to be appropriate or desirable.

#### CHANGES IN EXISTING LAW

In compliance with rule XXIX of the Senate, changes in existing law made by the bill are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in *italic*, existing law in which no change is proposed is shown in roman:)

AN ACT To amend the joint resolution entitled "Joint resolution to codify and emphasize existing rules and customs pertaining to the display and use of the flag of the United States of America"

§ 171. Same; conduct during playing.

[When the national anthem is played and the flag is not displayed, all present should stand and face the music. Those in uniform should salute at the first note of the anthem, retaining this position until the last note. All others should stand at attention, men removing the

headdress. When the flag is displayed, all present should face the flag and salute.]

*During rendition of the national anthem when the flag is displayed, all present except those in uniform should stand at attention facing the flag with the right hand over the heart. When the flag is not displayed, those present should face toward the music. During rendition of the anthem, men not in uniform should remove their headdress with their right hand and hold it at the left shoulder, the hand being over the heart. Women should place right hand over the heart. Persons in uniform should render the military salute at the first note of the anthem and retain this position until the last note.*

§ 172. Pledge of allegiance to the flag; manner of delivery.

[The following is designated as the pledge of allegiance to the flag: "I pledge allegiance to the flag of the United States of America and to the Republic for which it stands, one Nation under God, indivisible, with liberty and justice for all." Such pledge should be rendered by standing with the right hand over the heart. However, civilians will always show full respect to the flag when the pledge is given by merely standing at attention, men removing the headdress. Persons in uniform shall render the military salute.]

*The Pledge of Allegiance to the Flag. "I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one Nation under God, indivisible, with liberty and justice for all.", should be rendered by standing at attention facing the flag with the right hand over the heart. When not in uniform men should remove their headdress with their right hand and hold it at the left shoulder, the hand being over the heart. Women should place right hand over the heart. Persons in uniform should remain silent, face the flag, and render the military salute.*

§ 173. (Sec. 1) Display and use of flag by civilians; codification of rules and customs.

The following codification of existing rules and customs pertaining to the display and use of the flag of the United States of America is established for the use of such civilian or civilian groups or organizations as may not be required to conform with regulations promulgated by one or more executive departments of the Government of the United States. *The flag of the United States for the purpose of this Chapter shall be defined according to title 4, United States Code, Chapter 1, section 1 and section 2 and Executive Order 10834 issued pursuant thereto.*

§ 174. (Sec. 2) Same; time and occasions for display; hoisting and lowering.

(a) It is the universal custom to display the flag only from sunrise to sunset on buildings and on stationary flagstaffs in the open. [However, the flag may be displayed at night upon special occasions when it is desired to produce a patriotic effect.] *However, when a patriotic effect is desired, the flag may be displayed twenty-four hours a day if properly illuminated during the hours of darkness.*

(b) The flag should be hoisted briskly and lowered ceremoniously.

(c) The flag should not be displayed on days when the weather is inclement, except when an all weather flag is displayed.

(d) The flag should be displayed on all days. [when the weather permits.] especially on New Year's Day, January 1; Inauguration

Day, January 20: Lincoln's Birthday, February 12: Washington's Birthday, third Monday in February; Easter Sunday (variable); Mother's Day, second Sunday in May; Armed Forces Day, third Saturday in May; Memorial Day (half staff until noon), [May 30:] *the last Monday in May*; Flag Day, June 14; Independence Day, July 4; Labor Day, first Monday in September; Constitution Day, September 17; Columbus Day, second Monday in October; Navy Day, October 27; Veterans Day, [the fourth Monday in October], *November 11*; Thanksgiving Day, fourth Thursday in November; Christmas Day, December 25: such other days as may be proclaimed by the President of the United States: the birthdays of States (dates of admission); and on State holidays.

(e) The flag should be displayed daily, [weather permitting] on or near the main administration building of every public institution.

(f) The flag should be displayed in or near every polling place on election days.

(g) The flag should be displayed during school days in or near every schoolhouse.

§ 175. (Sec. 3) Same; position and manner of display.

The flag, when carried in a procession with another flag or flags, should be either on the marching right; that is, the flag's own right, or, if there is a line of other flags, in front of the center of that line.

(a) The flag should not be displayed on a float in a parade except from a staff, or as provided in subsection (i) of this section.

(b) The flag should not be draped over the hood, top, sides, or back of a vehicle or of a railroad train or a boat. When the flag is displayed on a motorcar, the staff should be fixed firmly to the chassis or clamped to the [radiator cap] *right fender*.

(c) No other flag or pennant should be placed above or, if on the same level, to the right of the flag of the United States of America, except during church services conducted by naval chaplains at sea, when the church pennant may be flown above the flag during church services for the personnel of the Navy. No person shall display the flag of the United Nations or any other national or international flag equal, above, or in a position of superior prominence or honor to, or in place of, the flag of the United States at any place within the United States or any Territory or possession thereof: *Provided*, That nothing in this section shall make unlawful the continuance of the practice heretofore followed of displaying the flag of the United Nations in a position of prominence or honor, and other national flags in positions of equal prominence or honor, with that of the flag of the United States at the headquarters of the United Nations.

(d) The flag of the United States of America, when it is displayed with another flag against a wall from crossed staffs, should be on the right, the flag's own right, and its staff should be in front of the staff of the other flag.

(e) The flag of the United States of America should be at the center and at the highest point of the group when a number of flags of States or localities or pennants of societies are grouped and displayed from staffs.

(f) When flags of States, cities, or localities, or pennants of societies are flown on the same halyard with the flag of the United States, the latter should always be at the peak. When the flags are flown from

adjacent staffs, the flag of the United States should be hoisted first and lowered last. No such flag or pennant may be placed above the flag of the United States or to the right of the flag of the United States [1], its own right.

(g) When flags of two or more nations are displayed, they are to be flown from separate staffs of the same height. The flags should be of approximately equal size. International usage forbids the display of the flag of one nation above that of another nation in time of peace.

(h) When the flag of the United States is displayed from a staff projecting horizontally or at an angle from the window sill, balcony, or front of a building, the union of the flag should be placed at the peak of the staff unless the flag is at half staff. When the flag is suspended over a sidewalk from a pole extending from a house to a pole at the edge of the sidewalk, the flag should be hoisted out, union first, from the building.

[i] When the flag is displayed otherwise than by being flown from a staff, it should be displayed flat, whether indoors or out, or so suspended that its folds fall free as though the flag were staffed. (i) When displayed either horizontally or vertically against a wall, the union should be uppermost and to the flag's own right, that is, to the observer's left. When displayed in a window, the flag should be displayed in the same way, with the union or blue field to the left of the observer in the street.

(j) When the flag is displayed over the middle of the street, it should be suspended vertically with the union to the north in an east and west street or to the east in a north and south street.

[k] When used on a speaker's platform, the flag, if displayed flat, should be displayed above and behind the speaker. When displayed from a staff in a church or public auditorium, if it is displayed in the chancel of a church, or on the speaker's platform in a public auditorium, the flag should occupy the position of honor and be placed at the clergyman's or speaker's right as he faces the congregation or audience. Any other flag so displayed in the chancel or on the platform should be placed at the clergyman's or speaker's left as he faces the congregation or audience. But when the flag is displayed from a staff in a church or public auditorium elsewhere than in the chancel or on the platform it shall be placed in the position of honor at the right of the congregation or audience as they face the chancel or platform. Any other flag so displayed should be placed on the left of the congregation or audience as they face the chancel or platform. (k) When used on a speaker's platform, the flag, if displayed flat, should be displayed above and behind the speaker. When displayed from a staff in a church or public auditorium, the flag of the United States of America should hold the position of superior prominence, in advance of the audience, and in the position of honor at the clergyman's or speaker's right as he faces the audience. Any other flag so displayed should be placed on the left of the clergyman or speaker or to the right of the audience.

(l) The flag should form a distinctive feature of the ceremony of unveiling a statue or monument, but it should never be used as the covering for the statue or monument.

[m] The flag, when flown at half staff, should be first hoisted to the peak for an instant and then lowered to the half-staff position.



The flag should be again raised to the peak before it is lowered for the day. By "half staff" is meant lowering the flag to one-half the distance between the top and bottom of the staff. Crepe streamers may be affixed to spear heads or flag-staffs in a parade only by order of the President of the United States. (m) *The flag, when flown at half-staff, should be first hoisted to the peak for an instant and then lowered to the half-staff position. The flag should be again raised to the peak before it is lowered for the day. On Memorial Day, the flag should be displayed at half-staff until noon only, then raised to the top of the staff. By order of the President, the flag shall be flown at half-staff upon the death of principal figures of the United States Government and the Governor of a State, territory, or possession, as a mark of respect to their memory. In the event of the death of other officials or foreign dignitaries, the flag is to be displayed at half-staff according to Presidential instructions or orders, or in accordance with recognized customs or practices not inconsistent with law. In the event of the death of a present or former official of the government of any State, territory, or possession of the United States, the Governor of that State, territory, or possession may proclaim that the National flag shall be flown at half-staff. The flag shall be flown at half-staff thirty days from the day of death of the President or a former President; ten days from the day of death of the Vice President, the Chief Justice or a retired Chief Justice of the United States, or the Speaker of the House of Representatives; from the day of death until interment of an Associate Justice of the Supreme Court, a Secretary of an executive or military department, a former Vice President, or the Governor of a State, territory, or possession; and on the day of death and the following day for a Member of Congress. As used in this subsection—*

- (1) the term "half-staff" means the position of the flag when it is one-half the distance between the top and bottom of the staff;
- (2) the term "executive or military department" means any agency listed under section 101 and 102 of title 5, United States Code; and
- (3) the term "Member of Congress" means a Senator, a Representative, a Delegate, or the Resident Commissioner from Puerto Rico."

(n) When the flag is used to cover a casket, it should be so placed that the union is at the head and over the left shoulder. The flag should not be lowered into the grave or allowed to touch the ground.

(o) When the flag is suspended across a corridor or lobby in a building with only one main entrance, it should be suspended vertically with the union of the flag to the observer's left upon entering. If the building has more than one main entrance, the flag should be suspended vertically near the center of the corridor or lobby with the union to the north, when entrances are to the east and west or to the east when entrances are to the north and south. If there are entrances in more than two directions, the union should be to the east.

§ 176. (Sec. 4) Same; respect for flag.

No disrespect should be shown to the flag of the United States of America; the flag should not be dipped to any person or thing. Regimental colors, State flags, and organization or institutional flags are to be dipped as a mark of honor.

[(a) The flag should never be displayed with the union down save as a signal of dire distress.] (a) *The flag should never be displayed with the union down, except as a signal of dire distress in instances of extreme danger to life or property.*

(b) The flag should never touch anything beneath it, such as the ground, the floor, water, or merchandise.

(c) The flag should never be carried flat or horizontally, but always aloft and free.

[(d) The flag should never be used as drapery of any sort whatsoever, never festooned, drawn back, nor up, in folds, but always allowed to fall free. Bunting of blue, white, and red, always arranged with the blue above, the white in the middle, and the red below, should be used for covering a speaker's desk, draping the front of a platform, and for decoration in general.] (d) *The flag should never be used as wearing apparel, bedding, or drapery. It should never be festooned, drawn back, nor up, in folds, but always allowed to fall free. Bunting of blue, white, and red, always arranged with the blue above, the white in the middle, and the red below, should be used for covering a speaker's desk, draping the front of a platform, and for decoration in general.*

[(e) The flag should never be fastened, displayed, used, or stored in such a manner as will permit it to be easily torn, soiled, or damaged in any way.] (e) *The flag should never be fastened, displayed, used, or stored in such a manner as to permit it to be easily torn, soiled or damaged in any way.*

(f) The flag should never be used as a covering for a ceiling.

(g) The flag should never have placed upon it, nor on any part of it, nor attached to it any mark, insignia, letter, word, figure, design, picture, or drawing of any nature.

(h) The flag should never be used as a receptacle for receiving, holding, carrying, or delivering anything.

[(i) The flag should never be used for advertising purposes in any manner whatsoever. It should not be embroidered on such articles as cushions or handkerchiefs and the like, printed or otherwise impressed on paper napkins or boxes or anything that is designed for temporary use and discard; or used as any portion of a costume or athletic uniform. Advertising signs should not be fastened to a staff or halyard from which the flag is flown.] (i) *The flag should never be used for advertising purposes in any manner whatsoever. It should not be embroidered on such articles as cushions or handkerchiefs and the like, printed or otherwise impressed on paper napkins or boxes or anything that is designed for temporary use and discard. Advertising signs should not be fastened to a staff or halyard from which the flag is flown.*

(j) *No part of the flag should ever be used as a costume or athletic uniform. However, a flag patch may be affixed to the uniform of military personnel, firemen, policemen, and members of patriotic organizations. The flag represents a living country and is itself considered a living thing. Therefore, the lapel flag pin being a replica, should be worn on the left lapel near the heart.*

[(j)] (k) The flag, when it is in such condition that it is no longer a fitting emblem for display, should be destroyed in a dignified way, preferably by burning.\*

§177. (Sec. 5) Same; conduct during hoisting, lowering or passing of flag.

[During the ceremony of hoisting or lowering the flag or when the flag is passing in a parade or in a review, all persons present should face the flag, stand at attention, and salute. Those present in uniform should render the military salute. When not in uniform, men should remove the headdress with the right hand holding it at the left shoulder, the hand being over the heart. Men without hats should salute in the same manner. Aliens should stand at attention. Women should salute by placing the right hand over the heart. The salute to the flag in the moving column should be rendered at the moment it passes.]

*During the ceremony of hoisting or lowering the flag or when the flag is passing in a parade or in review, all persons present except those in uniform should face the flag and stand at attention with the right hand over the heart. Those present in uniform should render the military salute. When not in uniform, men should remove their headdress with their right hand and hold it at the left shoulder, the hand being over the heart. Women should salute by placing right hand over the heart. Aliens should stand at attention. The salute to the flag in a moving column should be rendered at the moment the flag passes.*

"SEC. 8. [(a) The Commander in Chief of the Armed Forces of the United States shall appoint a National Flag Commission for the purpose of necessary study and revision of this joint resolution.

"(b) Any rule or custom pertaining to the display of the flag of the United States of America, set forth herein, may be altered, modified, or repealed, or additional rules with respect thereto may be prescribed, by the Commander in Chief of the Armed Forces of the United States, whenever he deems it to be appropriate or desirable; and any such alteration or additional rule shall be set forth in a proclamation.".]

#### DEPARTMENTAL REPORT

DEPARTMENT OF THE ARMY.  
Washington, D.C., January 22, 1976.

HON. ROMAN L. HRUSKA,

*Chairman, Standing Subcommittee on Federal Charters, Holidays and Celebrations, Committee on the Judiciary, U.S. Senate, Washington, D.C.*

DEAR MR. CHAIRMAN: Reference is made to your request for the Department of the Army views on S. J. Res. 49, 94th Congress, a joint resolution "To amend the joint resolution entitled 'Joint resolution to codify and emphasize existing rules and customs pertaining to the display and use of the flag of the United States of America'." The Department of the Army has been assigned responsibility for expressing the views of the Department of Defense on this joint resolution.

The purpose of the joint resolution is to clarify certain provisions of the laws concerning the proper use and display of the U.S. flag, which is popularly known as the flag code, and to direct the Commander in Chief of the Armed Forces of the United States to appoint a National Flag Commission for the purpose of necessary study and revision of this resolution.

The Department of the Army on behalf of the Department of Defense believes that such a study as contemplated by S. J. Res. 49 would be beneficial and has no objection to its enactment.

There are, however, two suggestions with respect to the resolution:

(a) The President recently signed the bill making Veterans' Day November 11th, starting in 1978, so lines 23 and 24, page 2, should be amended to establish Veterans' Day as the 11th of November:

(b) Section 16 of the resolution, new subsection "(j)" should be amended to indicate that the flag, per se, should not be used as a costume or athletic uniform. The rationale for this suggestion is that if no "part" of the flag should be used for such apparel, athletic teams and those who wear costumes may believe it to be a violation of the flag code for their garments to have white stars on a blue background, or red stripes interspersed with white stripes. Such innocuous designs should not be sacrosanct merely because they are used in the flag.

Enactment of S. J. Res. 49 would not affect the budgetary requirements of the Department of Defense.

This report has been coordinated within the Department of Defense in accordance with procedures prescribed by the Secretary of Defense.

The Office of Management and Budget advises that, from the standpoint of the Administration's program, there is no objection to the presentation of this report for the consideration of the Committee.

Sincerely,

NORMAN R. AUGUSTINE,  
*Acting Secretary of the Army.*

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